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JANUARY-DECEMBER 1992

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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C. 20240

Secretary of the Interior ----- Manual Lujan, Jr.
Office of Hearings and Appeals - Roger E. Middleton
Office of the Solicitor ----- Thomas L. Sansonetti

INDEX-DIGEST

JANUARY - DECEMBER 1992

This index-digest covers all published and unpublished decisions and opinions, by their headnotes and legal cites, of the Department of the Interior from January 1, 1992 to December 31, 1992, rendered in the Office of Hearings and Appeals (OHA), Arlington, VA, and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

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Editor: Rachael Cubbage

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SYMBOLS

AIRFA	----	American Indian Religious Freedom Act of 1978
ANCSA	----	Alaska Native Claims Settlement Act
ANCAB	----	Alaska Native Claims Appeal Board
ANILCA	----	Alaska National Interest Lands Conservation Act
APA	----	Administrative Procedure Act
BIA	----	Bureau of Indian Affairs
BLM	----	Bureau of Land Management
CFR	----	Code of Federal Regulations
EA	----	Environmental Assessment
EAJA	----	Equal Access to Justice Act
EIS	----	Environmental Impact Statement
EPA	----	Environmental Protection Agency
FAR	----	Federal Acquisition Regulation
FLPMA	----	Federal Land Policy and Management Act of 1976
FONSI	----	Finding of No Significant Impact
(US)FS	----	United States Forest Service
IBCA	----	Interior Board of Contract Appeals
IBIA	----	Interior Board of Indian Appeals
IBLA	----	Interior Board of Land Appeals
IBMA	----	Interior Board of Mine Operations Appeals
IBSMA	----	Interior Board of Surface Mining and Reclamation Appeals
IMLA	----	Indian Mineral Leasing Act of 1938
IRA	----	Indian Reorganization Act
M	----	Solicitor's Opinion
MMS	----	Mineral Management Service
NPA	----	National Park Service
OHA	----	Office of Hearings and Appeals
OSM(RE)	----	Office of Surface Mining Reclamation and Enforcement
SEC	----	Office of the Secretary
SMCRA	----	Surface Mining Control and Reclamation Act of 1977
U.S.C.	----	United States Code

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vacated in part, (On Recon.), 66 IBLA 367 (1982).

Ayouiak, Mary, 22 IBLA 384 (1975); vacated, (On Recon.),
59 IBLA 384 (1981).

Barash, Max, 63 I.D. 51 (1956); overruled in part, Solicitor's Opinion, M-36686, 74 I.D. 285 (1967); Permian Mud Service, Inc., 31 IBLA 150, 84 I.D. 342 (1977).

Bartel, John A., A-29664 (Oct. 11, 1962); distinguished, A-30129 (Nov. 9, 1964).

Bass Enterprises Production Co., 47 IBLA 53 (1980); modified & distinguished, Celsius Energy Co., 99 IBLA 53, 94 I.D. 394 (1987).

Bayou, Philip Malcolm, 13 IBIA 200 (1985); affirmed as modified, limits Estate of Joseph Caddo, 7 IBIA 286 (1979), & Estate of William Caddo, 9 IBIA 43 (1981).

Berger, Moise & Leon, 82 IBLA 253 (1984); affirmed in part, rev'd in part, Leo Crowley, 84 IBLA 7 (1984).

Bergman, Elsie, 23 IBLA 233 (1975); vacated, (On Recon.), 64 IBLA 180 (1982).

Bergman, Steven, 22 IBLA 233 (1975); vacated, (On Recon.), 61 IBLA 399 (1982).

Bergman, Warner, 21 IBLA 173 (1975); 31 IBLA 21 (1977); vacated, (On Recon.), 60 IBLA 214 (1981).

Beveridge, R. C., 50 IBLA 173 (1980); distinguished, Curtis Wheeler, 62 IBLA 384 (1982).

Blackhawk Coal Co., (On Recon.), 92 IBLA 365, 93 I.D. 285 (1986); amended, 94 IBLA 215 (1986).

Breene James O., Jr., 38 IBLA 281 (1978); vacated, (On Recon.), 42 IBLA 395 (1979).

Brick, Irving B., 36 IBLA 235 (1978); overruled, Robert R. Furman, 49 IBLA 64 (1980).

Brinkeroff, Zula C., 75 IBLA 179 (1983); modified, Santa Fe Mining, Inc., 79 IBLA 48 (1984).

Brinton, John C., Estate of, 25 IBLA 283 (1976); vacated in part, 71 IBLA 160 (1983).

Bumble Bee Seafoods, Inc., 65 IBLA 391 (1982); overruled to extent inconsistent, Rosander Mining Co., 84 IBLA 60 (1984).

Burns, David A., 30 IBLA 359 (1977); rev'd, Exxon Pipeline Co. v. Burns, Civ. No. A82-454 (Consolidated) (D. Alaska 1985).

Caldwell, Clair R., 42 IBLA 139 (1979); overruled to extent inconsistent, Harvey A. Clifton, 60 IBLA 29 (1981).
California Energy Co., 63 IBLA 159 (1982); rev'd, (On Recon.), 85 IBLA 254, 92 I.D. 125 (1985).

California Portland Cement Co., 40 IBLA 339 (1979); overruled, Kaiser Steel Corp., 63 IBLA 363 (1982).

California Wilderness Coalition, 101 IBLA 18 (1988); vacated in part, (On Recon.), 105 IBLA 196 (1988).

Caress, Charles, 41 IBLA 302 (1979); overruled to extent inconsistent, Harvey A. Clifton, 60 IBLA 29 (1981).

Carpenter, Keith P., 112 IBLA 101 (1989); modified, (On Recon.), 113 IBLA 27 (1990).

Chesebrough, Samuel A., 49 IBLA 249 (1980); overruled to extent inconsistent, Zula C. Brinkerhoff, 75 IBLA 179 (1983).

Chiskok, Evan, 22 IBLA 153 (1975); vacated, (On Recon.), 61 IBLA 1 (1981).

Chomicki, Blanche, 51 IBLA 128 (1980); overruled, Maurice W. Coburn (On Recon.), 82 IBLA 112 (1984).

Chorney, Joan, 108 IBLA 43 (1989); vacated, (On Recon.), 109 IBLA 96 (1989).

Clipper Mining Co., 22 L.D. 527 (1896); no longer followed in part, 67 I.D. 417 (1960).

Clipper Mining Co. v. Eli Mining & Land Co., 33 L.D. 660 (1905); no longer followed in part, 67 I.D. 417 (1960).

Cohen, Ben, 21 IBLA 330 (1975); recon. denied (1977); as modified, (On Judicial Remand), 103 IBLA 316 (1988).

Colorado-Ute Electric Ass'n, Inc., 83 IBLA 358 (1984), overruled, South Central Telephone Ass'n, Inc., 98 IBLA 275 (1987).

Computation of Royalty Under Sec. 15, 51 L.D. 283 (1925); overruled, Solicitor's Opinion, M-36888, 84 I.D. 54 (1977).

Conger (Ford), Francis Ingeborg, 13 IBIA 296; modified (On Review), 13 IBIA 361, 92 I.D. 634 (1985).

Conoco, Inc., 90 IBLA 388 (1986); overruled, Celsius Energy Co., 99 IBLA 53, 94 I.D. 394 (1987).

102 IBLA 230 (1988); vacated in part, (On Recon.), 113 IBLA 243 (1990).

Continental Oil Co., 68 I.D. 186 (1961); overruled in pertinent part, Solicitor's Opinion, M-36921, 87 I.D. 291 (1980).

74 I.D. 229 (1967); distinguished, Solicitor's Opinion, M-36927, 87 I.D. 616 (1980).

Cook Inlet Region, Inc., 90 IBLA 135, 92 I.D. 620 (1985); overruled in part, (On Recon.), 100 IBLA 50, 94 I.D. 422 (1987).

Corinth Partnership, 80 IBLA 31 (1984); vacated & remanded, (On Remand), 83 IBLA 277 (1984).

Coupey, Paul S., 33 IBLA 177 (1977); overruled to extent inconsistent, Zula C. Brinkerhoff, 75 IBLA 179 (1983).

Cranston, Monty, 67 IBLA 364 (1982); overruled to extent inconsistent, Pandora Petroleum Co., 74 IBLA 173 (1983).

Cummings, Kenneth F., 62 IBLA 206 (1982); overruled to extent inconsistent, Douglas H. Willson, 86 IBLA 135, 92 I.D. 153 (1985).

Cupper, Jerry, 45 IBLA 215 (1980); overruled to extent inconsistent, Harvey A. Clifton, 60 IBLA 29 (1981).

Davidson, Robert A., 13 IBLA 368 (1973); overruled to extent inconsistent, J. Burton Tuttle, 49 IBLA 278, 87 I.D. 350 (1980).

Davis, E. W., A-29889 (1964); no longer followed in part, Ruth E. Han, 13 IBLA 296, 80 I.D. 698 (1973).

Debord, Wayne E., 50 IBLA 216, 87 I.D. 465 (1980); modified, 54 IBLA 61 (1981).

Degnan, June I., 108 IBLA 282 (1989); rev'd, (On Recon.), 111 IBLA 360 (1989).

Dugan Production Corp., 103 IBLA 362 (1988); vacated, 117 IBLA 153 (1990).

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Eakon, Hilma, 22 IBLA 41 (1975); vacated, (On Recon.), 64 IBLA 97 (1982).

Eastern Associated Coal Corp., 3 IBMA 331, 81 I.D. 567, 1974-75 OSHD par. 18,706 (1974); overruled in part, Alabama By-Products Corp. (On Recon.), 7 IBMA 85, 83 I.D. 574 (1976); overruled in part, Zeigler Coal Co., 7 IBMA 280, 84 I.D. 127 (1977).

5 IBMA 185, 82 I.D. 506, 1975-76 OSHD par. 20,041 (1975); set aside in part, (On Recon.), 7 IBMA 14, 83 I.D. 425 (1976).

Eckels, Richard W., 62 IBLA 1 (1982); modified, (On Recon.), 65 IBLA 76 (1982).

Eklutna, Appeal of, 1 ANCAB 190, 83 I.D. 619 (1976); modified, Solicitor's Opinion, 85 I.D. 1 (1978).

Energy Partners, 21 IBLA 352 (1975); distinguished, Chevron Oil Co., 32 IBLA 275 (1977).

Engelhardt, Daniel A., 61 IBLA 65 (1981); set aside, (On Recon.), 62 IBLA 93, 89 I.D. 82 (1982).

Enserch Exploration, Inc., 70 IBLA 25 (1983); overruled to extent inconsistent, Lear Petroleum Exploration, Inc., 95 IBLA 304 (1987).

Esplin, Lee J., 56 I.D. 325 (1938); overruled to extent it applies, Solicitor's Opinion, M-36914, 86 I.D. 553 (1979).

Federal-American Partners, 37 IBLA 330 (1978); overruled to extent inconsistent, Zula C. Brinkerhoff, 75 IBLA 179 (1983).

Freeman Coal Mining Co., 3 IBMA 434, 81 I.D. 723, 1974-75 OSHD par. 19,177 (1974); overruled in part, Zeigler Coal Co., 7 IBMA 280, 84 I.D. 127 (1977).

Freeman v. Summers, 52 L.D. 201 (1927); overruled, U.S. v. Winegar, 16 IBLA 112, 81 I.D. 370 (1974); reinstated, U.S. v. Bohme, 51 IBLA 97, 87 I.D. 535 (1980).

Fults, Bill, 61 I.D. 437 (1905); overruled, 69 I.D. 181 (1962).

Garrett, Fred M., 66 IBLA 49 (1982); overruled to extent inconsistent, Pandora Petroleum Co., 74 IBLA 173 (1983).

General Electric Co., 55 IBLA 185 (1981); overruled to extent inconsistent, 56 IBLA 327 (1981).

Gifford, Samuel Lee, 53 IBLA 23 (1981); modified, (On Recon.), 55 IBLA 1 (1981).

Glassford, A. W., 56 I.D. 88 (1937); overruled to extent inconsistent, Emily K. Connell, A-29176, 70 I.D. 159 (1963).

Gold, Michael, 108 IBLA 231 (1989); modified, (On Recon.), 115 IBLA 218 (1990).

Goldbelt, Inc., 74 IBLA 308 (1983); affirmed in part, vacated in part, & remanded for evidentiary hearing, 85 IBLA 273, 92 I.D. 134 (1985).

Golden Valley Electric Ass'n, 85 IBLA 363 (1985); vacated, (On Recon.), 98 IBLA 203 (1987).

Gosuk, Jack, 22 IBLA 392 (1975); vacated, (On Recon.), 54 IBLA 306 (1981).

Gray, Eleanor A., A-28710 (1962); vacated as to Claim No. 4, A-28710 (Supp.) (May 7, 1964).

Gulf Oil Exploration & Production Co., 94 IBLA 364 (1986); modified, Atlantic Richfield Co., 105 IBLA 218, 95 I.D. 235 (1988).

Hagood, L. N., 65 I.D. 405 (1958); overruled, Beard Oil Co., 77 I.D. 166 (1970).

Hanlon, Christina Lavern, 23 IBLA 36 (1975); vacated, Andrew Gordon McKinley (On Recon.), 61 IBLA 282 (1982).

Hays, Alice, 36 IBLA 313 (1978); distinguished, Curtis Wheeler, 62 IBLA 384 (1982).

Hiko Bell Mining & Oil Co., 93 IBLA 143 (1986); sustained as modified, (On Recon.), 100 IBLA 371, 95 I.D. 1 (1988).

Holbeck, Halvor F., A-30376 (Dec. 2, 1965); overruled, 79 I.D. 416 (1972).

Hulsman, Lorinda L., 32 IBLA 280 (1977); overruled, James R. Hensher, 85 IBLA 343, 92 I.D. 140 (1985).

Hunt, Emily B., 23 IBLA 205 (1976); vacated, (On Recon.), 64 IBLA 304 (1982).

Idaho Dept. of Water Resources, 32 IBLA 89 (1977); vacated, (On Recon.), 49 IBLA 221 (1980).

Jacobsen, Stoddard v. BLM, 97 IBLA 182 (1987); overruled in part, (On Recon.), 103 IBLA 83 (1988).

Jaycox, Myrtle, 22 IBLA 324 (1975); vacated, (On Recon.), 64 IBLA 97 (1982).

Jerome P. McHugh & Assocs., 113 IBLA 341 (1990); vacated, (On Recon.), 117 IBLA 303 (1991)

Johansen, Daniel, 23 IBLA 292 (1976); vacated, (On Recon.), 54 IBLA 295 (1981).

Jones, Sam P., 74 IBLA 242 (1983); affirmed in part as modified, & vacated in part, (On Judicial Remand), 84 IBLA 331 (1985).

Kaguk, Luke F., 84 IBLA 350 (1985); overruled to extent inconsistent, Stephen Northway, 96 IBLA 301 (1987).

Keating Gold Mining Co., 52 L.D. 671 (1929); overruled in part, Arizona Public Service Co., 5 IBLA 137, 79 I.D. 67 (1972).

Keller, Herman A., 14 IBLA 188, 81 I.D. 26 (1974); distinguished, Robert E. Belknap, 55 IBLA 200 (1981).

Kenai Natives Ass'n, 87 IBLA 58 (1985); overruled to extent inconsistent, Matilda Titus, 92 IBLA 340 (1986).

Kenyon, Stephen, 51 IBLA 368 (1980); vacated in part, (On Recon.), 65 IBLA 44 (1982).

Kern County Land Co. (On Recon.), IA-0168748, IA-0170927, & IA-0170928; approved by Under Secretary Carver, Oct. 25, 1965; not followed to extent inconsistent with this opinion.

Kerr-McGee Nuclear Corp., 41 IBLA 197 (1979); rev'd, (On Recon.), 43 IBLA 348 (1979).

Kight, W. Verne, 47 IBLA 351 (1980); rev'd in part, (On Recon.), 61 IBLA 216 (1982).

Konukpeak, Nora E., 23 IBLA 86 (1975); vacated, (On Recon.), 60 IBLA 394 (1981).

L. A. Melka Marine Construction & Diving Co., Inc., IBCA-1511-9-81, 90 I.D. 322 (1983); vacated & appeal dismissed, (On Recon.), IBCA-1511-9-81, 90 I.D. 491 (1983).

Land Classification State of California, A-31022 (Aug. 14, 1968 & Jan. 23, 1969); overruled to extent inconsistent, A-31022 (Oct. 14, 1969); as amended, Oct. 27, 1969.

Layne & Bowler Export Corp., IBCA-245, 68 I.D. 33 (1961); overruled insofar as it conflicts, Schweigert, Inc. v. U.S., Ct. Cl. No. 26-66 (Dec. 15, 1967), & Galland-Henning Mfg. Co., IBCA-34-12-65 (Mar. 29, 1968).

Liability of Indian Tribes for State Taxes Imposed on Royalty Received From Oil & Gas Leases, 58 I.D. 535 (1943); superseded to extent inconsistent, Solicitor's Opinion, M-36896, 84 I.D. 905 (1977).

Liberty Petroleum Corp., 73 IBLA 368 (1983); rev'd, ANR Production Co., 82 IBLA 228 (1984).

Lingren, Sarah F., 23 IBLA 174 (1975); vacated, (On Recon.), 54 IBLA 181 (1981).

Liss, Merwin E., 67 I.D. 385 (1960); overruled, Arthur E. Meinhart, 11 IBLA 139, 80 I.D. 395 (1973).

Lomax Exploration Co., 105 IBLA 1 (1988); modified, Ladd Petroleum Corp., 107 IBLA 5 (1989).

Luke, Louise, 22 IBLA 388 (1975); vacated, (On Recon.), 60 IBLA 399 (1981).

Luse, Jeanette L., 61 I.D. 103 (1953); distinguished, Richfield Oil Corp., 71 I.D. 243 (1964).

Lyles, Clayton, Mr. & Mrs., & Messrs. Lonnie & Owen Lyles, Uniform Relocation Assistance Appeal of, 8 OHA 23 (1989); modified, (On Recon. by Director), 8 OHA 94 (1989).

Lynn, Robert G., 70 IBLA 141 (1983); vacated, (On Recon.), 73 IBLA 288 (1983).

Lytle, Frank C., III, 69 IBLA 210 (1982); overruled to extent inconsistent, L. Lee Horschman, 74 IBLA 360 (1983).

Malesky, James A., 102 IBLA 175 (1988); rev'd, (On Recon.), 106 IBLA 327 (1989).

Manzonie, John & Adellie, I.G.D. 615; distinguished, A-29334 (July 26, 1963).

Marathon Oil Co., 94 IBLA 78 (1986); vacated in part, (On Recon.), 103 IBLA 138 (1988).

Martin, Wilbur, Sr., A-25862 (May 31, 1950); overruled to extent inconsistent, U.S. v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981).

McMurtrie, Nancy, 73 IBLA 247 (1983); overruled to extent inconsistent, Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984).

Mead, Robert E., 61 I.D. 111 (1955); overruled, Jones-O'Brien, Inc., 85 I.D. 89 (1978).

Memmott, Sandra, 88 IBLA 379 (1985); reaffirmed as modified, (On Recon.), 93 IBLA 113 (1986).

Merritt-Chapman & Scott Corp., IBCA-257 (June 22, 1961); distinguished, IBCA-274 (Sept. 15, 1961).

Mertz, Dennis J., 43 IBLA 302 (1979); overruled to extent inconsistent, Harvey A. Clifton, 60 IBLA 29 (1981).

Mezey, Cliff, 50 IBLA 157 (1980); vacated, (On Recon.), 66 IBLA 178 (1982).

Michigan Wisconsin Pipeline Co., 64 IBLA 247 (1982); vacated in part, (On Recon.), 80 IBLA 317 (1984).

Mikesell, Henry D., A-24112 (Mar. 11, 1946); rehearing denied (June 20, 1946); overruled to extent inconsistent, 70 I.D. 149 (1963).

Miller, Duncan, A-29760 (Sept. 18, 1963); A-30742 (Dec. 2, 1966); and A-30722 (Apr. 14, 1967); overruled, 6 IBLA 216, 79 I.D. 416 (1972).

Miller, Duncan, 6 IBLA 283 (1972); overruled to extent inconsistent, Jones-O'Brien, Inc., 85 I.D. 89 (1978).

Mingo Oil Producers, 94 IBLA 384 (1986); vacated, (On Recon.), 98 IBLA 133 (1987).

Minnier, Willene, 45 IBLA 1 (1980); overruled to extent inconsistent, Harvey A. Clifton, 60 IBLA 29 (1981).

Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978); limited in effect, Carl Gerard, 70 IBLA 343 (1983).

Morgan, Henry S., 65 I.D. 369 (1958); overruled to extent inconsistent, 71 I.D. 22 (1964).

Moses, Beulah, 21 IBLA 157 (1975); vacated, (On Recon.), 60 IBLA 252 (1981).

Mountain Fuel Supply Co., A-31053 (Dec. 19, 1969); overruled, 6 IBLA 216, 79 I.D. 416 (1972).

Munsey v. Smitty Baker Coal Co., Inc., 1 IBMA 144; 79 I.D. 501 (1972); distinguished, Sewell Coal Co., 2 IBMA 80, 80 I.D. 251 (1973).

Muslow, James, Sr., 51 IBLA 19 (1980); affirmed in part, rev'd in part, (On Recon.), 65 IBLA 352 (1982).

Myll, Clifton O., 71 I.D. 458 (1964); supplemented, 71 I.D. 486 (1964); vacated, 72 I.D. 536 (1965).

Nat'l Livestock Co., I.G.D. 55 (1938); overruled, U.S. v. Maher, 5 IBLA 209, 79 I.D. 109 (1972).

Naughton, Harold J., 3 IBLA 237, 78 I.D. 300 (1971); distinguished, Kristeen J. Burke, 20 IBLA 162 (1975).

Nenana, City of, 98 IBLA 177 (1987); as modified, (On Recon.), 106 IBLA 26 (1988), vacated, Toghotthele Corp. v. Luhan, No. 89-1763 (Aug. 1, 1991).

New Mexico, State of, 24 IBLA 135 (1976); vacated, (On Recon.), 50 IBLA 367 (1980).

Northway Natives, Inc., 69 IBLA 219 (1982); overruled to extent inconsistent, U.S. Fish & Wildlife Service, 72 IBLA 218 (1983).

Northwest Pipeline Co., 65 IBLA 245 (1982); set aside, (On Recon.), 77 IBLA 46 (1983).

Northwestern Colorado Broadcasting Co., 18 IBLA 62 (1974); overruled, Peregrine Broadcasting Co., 62 IBLA 133 (1982).

Oil & Gas Privilege & License Tax, Fort Peck Reservation, Under Laws of Montana, M-36318 (Oct. 13, 1955); superseded to extent inconsistent, Solicitor's Opinion, M-36896, 84 I.D. 905 (1977).

Opinion of Assoc. Solicitor (Lands), M-34999 (Oct. 22, 1947); distinguished, Solicitor's Opinion, M-36613, 68 I.D. 433 (1961).

Opinion of Assoc. Solicitor for Indian Affairs, M-36756 (Oct. 8, 1968); vacated as to conflict, Solicitor's Opinion, M-36756 (Supp.) (Nov. 18, 1971).

Opinion of Chief Counsel, 43 L.D. 339 (1914); explained, Solicitor's Opinion, M-36634, 68 I.D. 372 (1961).

Opinion of Deputy Ass't Secy (Dec. 2, 1966); superseded to extent inconsistent, Solicitor's Opinion, M-36896, 84 I.D. 905 (1977).

Opinion of Secy, M-36733, 75 I.D. 147 (1968); vacated, Solicitor's Opinion, M-36733 (Supp.), 76 I.D. 69 (1969).

Opinion of Solicitor, 55 I.D. 14 (1934); overruled so far as inconsistent, Solicitor's Opinion, M-36803, 77 I.D. 49 (1970).

Opinion of Solicitor, M-27690 (June 15, 1934); overruled to extent of conflict, Solicitor's Opinion, M-36936, 88 I.D. 586 (1981).

Opinion of Solicitor, M-28198 (Jan. 8, 1936); finding inter alia, Indian title extinguished, is well founded, & is affirmed, Solicitor's Opinion, M-36886, 84 I.D. 1 (1977); overruled, Solicitor's Opinion, M-36908, 86 I.D. 3 (1979).

Opinion of Solicitor, 55 I.D. 466 (1936); overruled to extent it applies to 1926 Exec. Order, Solicitor's Opinion, M-36914, 86 I.D. 553 (1979).

Opinion of Solicitor, M-34326, 59 I.D. 147 (1945); overruled in part, Solicitor's Opinion, M-36887, 84 I.D. 72 (1977).

Opinion of Solicitor, M-36047, 60 I.D. 436 (1950); will not be followed to extent of conflict, Solicitor's Opinion, M-36677, 72 I.D. 92 (1965).

Opinion of Solicitor, M-36051 (Dec. 7, 1950); modified, Solicitor's Opinion, M-36863, 79 I.D. 51 (1972).

Opinion of Solicitor, M-36241 (Sept. 22, 1954); overruled as far as inconsistent, Solicitor's Opinion, M-36907, 85 I.D. 433 (1978).

Opinion of Solicitor, M-36410 (Feb. 11, 1957); overruled to extent of conflict, Solicitor's Opinion, M-36936, 88 I.D. 586 (1981).

Opinion of Solicitor, M-36429, 64 I.D. 393 (1957); no longer followed, B. E. Burnaugh, A-28340 (Supp.), 67 I.D. 366 (1960).

Opinion of Solicitor, M-36434 (Sept. 12, 1958); overruled to extent inconsistent, Turner Smith, Jr., 66 IBLA 1, 89 I.D. 386 (1982).

Opinion of Solicitor, M-36456, 64 I.D. 435 (1957); not followed to extent it conflicts with these views, Solicitor's Opinion, M-36456 (Supp.), 76 I.D. 14 (1969).

Opinion of Solicitor, M-36463, 64 I.D. 351 (1957); overruled, Solicitor's Opinion, M-36706, 74 I.D. 165 (1967).

Opinion of Solicitor, M-36512 (July 29, 1958); overruled to extent inconsistent, Emily K. Connell, A-29176, 70 I.D. 159 (1963).

Opinion of Solicitor, M-36531 (Oct. 27, 1958) & M-36531 (Supp.) (July 20, 1959); overruled, Solicitor's Opinion, M-36629, 69 I.D. 110 (1962).

Opinion of Deputy Solicitor, M-36562 (Aug. 21, 1959); overruled, Solicitor's Opinion, M-36911, 86 I.D. 151 (1979).

Opinion of Solicitor, M-36613, 68 I.D. 433 (1961); distinguished & limited, Solicitor's Opinion, M-36666, 72 I.D. 245 (1965).

Opinion of Solicitor, M-36767 (Nov. 1, 1967); supplementing, Solicitor's Opinion, M-36599, 69 I.D. 195 (1962).

Opinion of Solicitor, M-36779 (Nov. 17, 1969), & M-36841 (Nov. 9, 1971); distinguished & overruled, Solicitor's Opinion, M-36918, 86 I.D. 661 (1979).

Opinion of Solicitor, M-36886, 84 I.D. 1 (1977); overruled, Solicitor's Opinion, M-36908, 86 I.D. 3 (1979).

Opinion of Solicitor, M-36905 (Supp.), 88 I.D. 903 (1981); earlier opinions withdrawn, Solicitor's Opinion, M-36938, 88 I.D. 903 (1981).

Opinion of Solicitor, M-36910, 86 I.D. 89 (1979); modified, Solicitor's Opinion, M-36910 (Supp.), 88 I.D. 909 (1981).

Opinion of Solicitor, M-36915, 86 I.D. 400 (1979); modified to extent inconsistent, Solicitor's Opinion, M-36915 (Supp. I), 90 I.D. 255 (1983).

Oregon Alder-Maple Co., 1 IBLA 241 (1971); distinguished, Nordic Veneers, Inc., 3 IBLA 86 (1971).

Oregon Portland Cement Co., 66 IBLA 204 (1982); vacated, (On Judicial Remand), 84 IBLA 186 (1984).

Orem Development Co. v. Calder, A-26604 (Dec. 18, 1953); decision set aside & case remanded, (On Recon.), 90 I.D. 223 (1983).

Page, Ralph, 8 IBLA 435 (1972); explained, Sam Rosetti, 15 IBLA 288, 81 I.D. 251 (1974).

Paine, John A., 22 IBLA 56 (1975); vacated, 66 IBLA 77 (1982).

Pardee Petroleum Corp., 98 IBLA 20 (1987); overruled in part to extent inconsistent with Great Western Petroleum & Refining Co., 124 IBLA 16 (1992).

Peters, Curtis D., 13 IBIA 4, 80 I.D. 595 (1973); overruled, James R. Hensher, 85 IBLA 343, 92 I.D. 140 (1985).

Phebus, Clayton, 48 L.D. 128 (1921); overruled so far as in conflict, 50 L.D. 281 (1924); overruled to extent inconsistent, Emily K. Connell, A-29176, 70 I.D. 159 (1963).

Phillips, Cecil H., A-30851 (Nov. 16, 1967); overruled, Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

Phillips, Vance W., 14 IBLA 79 (1973); modified, Vance W. Phillips, 19 IBLA 211 (1975).

Plomis, Wilfred, 62 IBLA 162 (1982); modified in part, Horace H. Alvord, IV, 80 IBLA 49 (1984).

Provinse, David A., 35 IBLA 221, 85 I.D. 154 (1978); overruled to extent inconsistent, 89 IBLA 154 (1985).

49 IBLA 134 (1980); overruled to extent inconsistent, 57 IBLA 319 (1981).

Ranger Fuel Corp., 2 IBMA 163, 80 I.D. 708 (1973); set aside, Ranger Fuel Corp., 2 IBMA 186, 80 I.D. 604 (1973).

Rayburn, Ethel Cowgill, A-28866 (Sept. 6, 1962); modified, T. T. Cowgill, 19 IBLA 274 (1975).

Reich, Harry, 27 IBLA 123 (1976); distinguished, 57 IBLA 357 (1981).

Reliable Coal Corp., 1 IBMA 50, 78 I.D. 199 (1971); distinguished, Zeigler Coal Corp., 1 IBMA 71, 78 I.D. 362 (1971).

Relocation of Flathead Irrigation Project's Kerr Substation & Switchyard, M-36735 (Jan. 31, 1968); rev'd & withdrawn, Solicitor's Opinion, M-36735 (Supp.), 83 I.D. 346 (1976).

Renwick, Richard, 76 IBLA 57 (1983); rev'd & remanded, (On Recon.), 78 IBLA 360 (1984).
Republic Oil & Mining Co., 35 IBLA 212 (1978); distinguished, Curtis Wheeler, 62 IBLA 384 (1982).

Resources Exploration & Mining, Inc., 42 IBLA 63 (1979); modified, (On Recon.), 43 IBLA 89 (1979).

Rhonda Coal Co., 4 IBSMA 124, 89 I.D. 460 (1982); modified to extent inconsistent, Kimberly Sue Coal Co., Inc., 74 IBLA 170 (1983).

Ricci, Charles P., 33 IBLA 288 (1978); set aside & remanded, (On Recon.), 34 IBLA 186 (1978).

Ross, John R., A-27259 (Mar. 12, 1956); set aside in part, Robert C. Ellis, A-29185 (Sept. 9, 1964).

Sanford, Nora L., 43 IBLA 74 (1979); vacated, (On Recon.), 63 IBLA 335 (1982).

Schweite, Helena M., 14 IBLA 305 (1974); distinguished, Kristeen J. Burke, 20 IBLA 162 (1975).

Seggerson, Edward, Jr., 67 IBLA 189 (1982); modified, (On Recon.), 74 IBLA 267 (1983).

Shaw Resources, Inc., 73 IBLA 291 (1983); reconsidered & modified, 79 IBLA 153, 91 I.D. 122 (1984).

Shillander, H. E., A-30279 (Jan. 26, 1965); overruled, 6 IBLA 216, 79 I.D. 416 (1972).

Sierra Club, 79 IBLA 240 (1984); set aside, (On Recon.), 84 IBLA 175 (1984).

Silver Spot Metals, Inc., 51 IBLA 212 (1980); overruled to extent inconsistent, Zula C. Brinkeroff, 75 IBLA 179 (1983).

Simpson, Robert E., A-4167 (Jan. 22, 1970); overruled to extent inconsistent, U.S. v. Union Carbide Corp., 31 IBLA 72, 84 I.D. 309 (1977).

Smith, James W. (IBLA 80-57 & IBLA 80-67), 46 IBLA 233 (1980); IBLA 80-67; dismissed, 55 IBLA 390 (1981).

Smith, M. P., 51 L.D. 251 (1925); overruled, Solicitor's Opinion, M-36888, 84 I.D. 54 (1977).

Snow, George Val, 46 IBLA 101 (1980); vacated, (On Judicial Remand), 79 IBLA 261 (1984).

Standard Oil Co. of California, 76 I.D. 271 (1969); no longer followed, 5 IBLA 26, 79 I.D. 23 (1972).

Southern Utah Wilderness Alliance, 100 IBLA 63 (1987); overruled, Utah Chapter of the Sierra Club, 121 IBLA 1, 98 I.D. 267 (1991).

Star Gold Mining Co., 47 L.D. 38 (1919); distinguished, U.S. v. Alaska Empire Gold Mining Co., 71 I.D. 273 (1964).

State Production Taxes on Tribal Royalties from Leases Other than Oil & Gas, M-36345 (May 4, 1956); superseded to extent inconsistent, Solicitor's Opinion, M-36896, 84 I.D. 905 (1977).

Stevens, David E., 23 IBLA 221 (1976); vacated, 64 IBLA 72 (1982).

Stevens, Marion, 23 IBLA 280 (1976); vacated, 64 IBLA 69 (1982).

St. Pierre v. Comm'r of Indian Affairs, 9 IBIA 203, 89 I.D. 132 (1982); overruled, Burnette v. Deputy Ass't Secretary--Indian Affairs (Operations), 10 IBIA 464, 89 I.D. 609 (1982).

Superior Oil Co., A-28897 (Sept. 12, 1962); distinguished in dictum, 6 IBLA 318, 79 I.D. 439 (1972).

T.E.T. Partnership, 84 IBLA 10 (1984); petition granted & prior decision vacated, (On Recon.), 88 IBLA 13 (1985).

Tevuk, David, 22 IBLA 296 (1975); rev'd & remanded, (On Recon.), 29 IBLA 296 (1975).

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Union Oil Co., 56 IBLA 206 (1981); vacated, (On Recon.), 58 IBLA 166 (1981).

Union Oil Co. of California (Supp.), 72 I.D. 313 (1965); overruled & rescinded in part, U.S. v. Energy Resources Technology Land, Inc., 74 IBLA 117 (1983).

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Village & City Council of Aleknagik, 77 IBLA 130 (1983); modified in part, (On Recon.), 80 IBLA 221 (1984).

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Wexpro Co., 90 IBLA 394 (1986); overruled, Celsius Energy Co., 99 IBLA 53, 94 I.D. 394 (1987).

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			123	IBLA	138	(May 22, 1992)
			124	IBLA	318	(Nov. 4, 1992)
	188(e)	-----	122	IBLA	325	(Mar. 11, 1992)
			123	IBLA	138	(May 22, 1992)
			124	IBLA	318	(Nov. 4, 1992)
	191	-----	22	IBIA	240	(Aug. 24, 1992)
	201	-----	124	IBLA	238	(Oct. 30, 1992)
	201(a)(1)	-----	124	IBLA	83	(Sept. 15, 1992)
	202a(3)	-----	123	IBLA	169, 99 I.D.	87 (1992)
	207	-----	124	IBLA	238	(Oct. 30, 1992)
	207(a)	-----	123	IBLA	169, 99 I.D.	87 (1992)
	207(b)	-----	123	IBLA	169, 99 I.D.	87 (1992)
	209	-----	122	IBLA	325	(Mar. 11, 1992)
			123	IBLA	169, 99 I.D.	87 (1992)
			124	IBLA	238	(Oct. 30, 1992)
	225	-----	122	IBLA	190	(Feb. 10, 1992)
	226	-----	122	IBLA	36	(Jan. 7, 1992)
			124	IBLA	119	(Sept. 23, 1992)
	226(b)	-----	123	IBLA	300	(June 25, 1992)
			124	IBLA	185	(Oct. 14, 1992)
	226(b)(1)(A)	-----	122	IBLA	17	(Jan. 2, 1992)
			124	IBLA	119	(Sept. 23, 1992)
	226(c)	-----	122	IBLA	17	(Jan. 2, 1992)
			122	IBLA	267	(Mar. 3, 1992)
			124	IBLA	119	(Sept. 23, 1992)
	226(e)	-----	124	IBLA	16	(Aug. 19, 1992)
	226(i)	-----	123	IBLA	16	(Aug. 19, 1992)
	226-3(a)	-----	122	IBLA	17	(Jan. 2, 1992)
	282	-----	123	IBLA	369	(July 23, 1992)
	283	-----	123	IBLA	369	(July 23, 1992)
	601	-----	123	IBLA	122	(May 21, 1992)
	601-604	-----	123	IBLA	122	(May 21, 1992)
			124	IBLA	310	(Nov. 4, 1992)
	612	-----	123	IBLA	96	(May 12, 1992)
	612a	-----	122	IBLA	24	(Jan. 3, 1992)
	621	-----	124	IBLA	247	(Nov. 2, 1992)
	621-625	-----	124	IBLA	247	(Nov. 2, 1992)
	621(a)	-----	124	IBLA	247	(Nov. 2, 1992)
	621(b)	-----	124	IBLA	247	(Nov. 2, 1992)
	623	-----	124	IBLA	247	(Nov. 2, 1992)
	1001-1027	-----	124	IBLA	171	(Oct. 2, 1992)
	1011	-----	124	IBLA	171	(Oct. 2, 1992)
	1201	-----	123	IBLA	129	(May 21, 1992)
	1201-1328	-----	123	IBLA	195	(June 5, 1992)
			123	IBLA	169, 99 I.D.	87 (1992)
	1202(a)	-----	123	IBLA	129	(May 21, 1992)
	1251	-----	123	IBLA	129	(May 21, 1992)
	1252	-----	122	IBLA	90	(Jan. 4, 1992)
	1253	-----	124	IBLA	72	(Sept. 2, 1992)

TITLE 30 CONT.

sec. 1256(a) -----	123 IBLA 253, 99 I.D. 100 (1992)
	123 IBLA 334 (July 14, 1992)
1258(a)(13) -----	123 IBLA 195 (June 5, 1992)
1258(a)(13)(B) -----	123 IBLA 195 (June 4, 1992)
1260(c) -----	123 IBLA 253, 99 I.D. 100 (1992)
1265(b)(3) -----	123 IBLA 253, 99 I.D. 100 (1992)
1265(b)(8)(F) -----	123 IBLA 195 (June 5, 1992)
1265(b)(10) -----	123 IBLA 195 (June 5, 1992)
1265(b)(10)G) -----	123 IBLA 195 (June 5, 1992)
1266(b)(1) -----	123 IBLA 129 (May 21, 1992)
1266(b)(10) -----	123 IBLA 129 (May 21, 1992)
1271(a) -----	122 IBLA 316 (Mar. 11, 1992)
	123 IBLA 129 (May 21, 1992)
	123 IBLA 253, 99 I.D. 100 (1992)
	123 IBLA 334 (July 14, 1992)
	123 IBLA 361 (July 21, 1992)
	123 IBLA 395 (Aug. 7, 1992)
1271(a)(1) -----	123 IBLA 129 (May 21, 1992)
	123 IBLA 253, 99 I.D. 100 (1992)
1271(a)(5) -----	123 IBLA 334 (July 14, 1992)
1272(e) -----	122 IBLA 316 (Mar. 11, 1992)
1278 -----	122 IBLA 90 (Jan. 14, 1992)
1278(2) -----	122 IBLA 90 (Jan. 14, 1992)
1291(28)(A) -----	123 IBLA 253, 99 I.D. 100 (1992)
1307 -----	123 IBLA 159 (June 5, 1992)
1307(a) -----	123 IBLA 195 (June 5, 1992)
1307(b) -----	123 IBLA 195 (June 5, 1992)
1339(a) -----	123 IBLA 299 (June 8, 1992)
1701(a)(4) -----	125 IBLA 28, 99 I.D. 272 (1992)
1701(b)(2) -----	123 IBLA 278 (June 18, 1992)
1701(b)(4) -----	125 IBLA 28, 99 I.D. 272 (1992)
1702(7) -----	125 IBLA 28, 99 I.D. 272 (1992)
1702(14) -----	125 IBLA 28, 99 I.D. 272 (1992)
1711(a) -----	123 IBLA 278 (June 18, 1992)
	125 IBLA 28, 99 I.D. 272 (1992)
1711(c)(1) -----	123 IBLA 278 (June 18, 1992)
	124 IBLA 185 (Oct. 14, 1992)
1711(c)(2) -----	123 IBLA 278 (June 18, 1992)
1712(a) -----	125 IBLA 28, 99 I.D. 272 (1992)
1712(a)(2) -----	125 IBLA 28, 99 I.D. 272 (1992)
1713 -----	123 IBLA 278 (June 18, 1992)
1713(a) -----	123 IBLA 278 (June 18, 1992)
	124 IBLA 185 (Oct. 14, 1992)
1713(b) -----	122 IBLA 141 (Feb. 3, 1992)
1714 -----	22 IBIA 240 (Aug. 24, 1992)
	123 IBLA 45 (May 6, 1992)
1715(a) -----	123 IBLA 45 (May 6, 1992)
1717(a) -----	124 IBLA 185 (Oct. 14, 1992)
1717(a)(1) -----	123 IBLA 278 (June 18, 1992)

TITLE 30 CONT.

sec. 1719 ----- 122 IBLA 283 (Mar. 5, 1992)
 123 IBLA 45 (May 6, 1992)
 1721(a) ----- 123 IBLA 383 (Aug. 5, 1992)
 1735 ----- 122 IBLA 50 (Jan. 7, 1992)
 122 IBLA 267 (Mar. 3, 1992)
 1735(d)' ----- 123 IBLA 278 (June 18, 1992)
 1755 ----- 122 IBLA 141 (Feb. 3, 1992)

TITLE 31:

sec. 3727 ----- IBCA-2103-N, 99 I.D. 1 (1992)

TITLE 33

sec. 1375 ----- IBCA-2553, 99 I.D. 194 (1992)

TITLE 41:

sec. 15 ----- IBCA-2103-N, 99 I.D. 1 (1992)
 254(d)(1) ----- IBCA-2319 et al., 99 I.D. 249
 (1992)
 254(d)(1)(D) ----- IBCA-2319 et al., 99 I.D. 249
 (1992)
 254(d)(3) ----- IBCA-2319 et al., 99 I.D. 249
 (1992)
 254(d)(4) ----- IBCA-2319 et al., 99 I.D. 249
 (1992)
 601 ----- IBCA-2103-N, 99 I.D. 1 (1992)
 IBCA-2553, 99 I.D. 194 (1992)
 601 et seq. ----- IBCA-2103-N, 99 I.D. 126 (1992)
 IBCA-3008 et al., 99 I.D. 248
 (1992)
 602(4) ----- IBCA-2103-N, 99 I.D. 1 (1992)
 605(a) ----- IBCA-2103-N, 99 I.D. 1 (1992)
 IBCA-2448, 99 I.D. 121 (1992)
 IBCA-2319 et al., 99 I.D. 249
 (1992)
 605(b) ----- IBCA-2448, 99 I.D. 121 (1992)
 605(c) ----- IBCA-2319 et al., 99 I.D. 242
 (1992)
 605(c)(1) ----- IBCA-2103-N, 99 I.D. 1 (1992)
 IBCA-2319 et al., 99 I.D. 242
 (1992)
 606 ----- IBCA-2944 et al., 99 I.D. 163
 (1992)
 611 ----- IBCA-2448, 99 I.D. 1221 (1992)

TITLE 42:

sec.	300h-3(e) -----	124 IBLA 211 (Oct. 23, 1992)
	1996 -----	124 IBLA 267 (Nov. 3, 1992)
	3534 -----	22 IBIA 271 (Sept. 9, 1992)
	4321 -----	124 IBLA 191 (Oct. 15, 1992)
	4321-4335 -----	22 IBIA 22 (Apr. 13, 1992)
		22 IBIA 47 (May 4, 1992)
	4321-4370 -----	124 IBLA 162 (Oct. 1, 1992)
	4332 -----	122 IBLA 65 (Jan. 9, 1992)
		123 IBLA 302 (June 25, 1992)
	4332(2)(C) -----	22 IBIA 22 (Apr. 13, 1992)
		122 IBLA 53 (Jan. 9, 1992)
		122 IBLA 334 (Mar. 11, 1992)
		122 IBLA 155 (Feb. 4, 1992)
		122 IBLA 165 (Feb. 7, 1992)
		122 IBLA 255 (Feb. 28, 1992)
		122 IBLA 362 (Mar. 20, 1992)
		123 IBLA 302 (June 25, 1992)
		124 IBLA 44 (Aug. 26, 1992)
		124 IBLA 83 (Sept. 15, 1992)
		124 IBLA 130 (Sept. 20, 1992)
		124 IBLA 211 (Oct. 23, 1992)
		124 IBLA 267 (Nov. 3, 1992)
	4332(2)(E) -----	22 IBIA 22 (Apr. 13, 1992)
		122 IBLA 334 (Mar. 11, 1992)
		124 IBLA 83 (Sept. 15, 1992)
		124 IBLA 130 (Sept. 24, 1992)
	4601-4655 -----	9 OHA 181 (Aug. 28, 1992)
	4601 <u>et seq.</u> -----	9 OHA 161 (May 15, 1992)
	4601(6)(A)(i)(I) -----	9 OHA 181 (Aug. 28, 1992)
	4601(6)(B) -----	9 OHA 181 (Aug. 28, 1992)
	4601(7)(A) -----	9 OHA 170 (June 9, 1992)
	4601(7)(B) -----	9 OHA 170 (June 9, 1992)
	4622(a) -----	9 OHA 161 (May 15, 1992)
		9 OHA 170 (June 9, 1992)
	4622(c) -----	9 OHA 170 (June 9, 1992)
	4633 -----	9 OHA 161 (May 15, 1992)
	4652 -----	9 OHA 161 (May 15, 1992)
	4651(b)(1) -----	9 OHA 161 (May 15, 1992)
	6901-6987 -----	123 IBLA 150 (May 28, 1992)
	6903(3) -----	123 IBLA 150 (May 28, 1992)
	6903(29) -----	123 IBLA 150 (May 28, 1992)
	6944(a) -----	123 IBLA 150 (May 28, 1992)
	9601-9657 -----	123 IBLA 150 (May 28, 1992)

TITLE 43:

sec.	161 -----	124 IBLA 363 (Dec. 8, 1992)
	213 -----	123 IBLA 354 (July 20, 1992)
	209(b)(3) -----	123 IBLA 51, 99 I.D. 64 (1992)

TITLE 43 CONT.

sec.	270-1 -----	123 IBLA 6 (Apr. 22, 1992)
		124 IBLA 294 (Nov. 4, 1992)
	270-1-270-3 -----	122 IBLA 30 (Jan. 3, 1992)
		122 IBLA 109 (Jan. 14, 1992)
		122 IBLA 209 (Feb. 12, 1992)
		122 IBLA 344 (Mar. 11, 1992)
		123 IBLA 6 (Apr. 22, 1992)
		123 IBLA 233 (June 9, 1992)
		124 IBLA 1 (Aug. 13, 1992)
		124 IBLA 57 (Aug. 27, 1992)
		124 IBLA 294 (Nov. 4, 1992)
		124 IBLA 336 (Nov. 18, 1992)
		124 IBLA 349 (Dec. 2, 1992)
		124 IBLA 386 (Dec. 10, 1992)
	270-2 -----	123 IBLA 6 (Apr. 22, 1992)
	270-3 -----	124 IBLA 294 (Nov. 4, 1992)
	291-301 -----	122 IBLA 68 (Jan. 10, 1992)
	299 -----	122 IBLA 36 (Jan. 7, 1992)
		122 IBLA 68 (Jan. 10, 1992)
		123 IBLA 51, 99 I.D. 64 (1992)
	315 -----	122 IBLA 77 (Jan. 14, 1992)
		123 IBLA 80 (May 11, 1992)
		124 IBLA 176 (Oct. 13, 1992)
		124 IBLA 200 (Oct. 21, 1992)
	315a -----	122 IBLA 77 (Jan. 14, 1992)
		123 IBLA 80 (May 11, 1992)
		124 IBLA 67 (Sept. 2, 1992)
		124 IBLA 176 (Oct. 13, 1992)
		124 IBLA 200 (Oct. 21, 1992)
	315a-315r -----	122 IBLA 77 (Jan. 14, 1992)
		123 IBLA 80 (May 11, 1992)
		124 IBLA 176 (Oct. 13, 1992)
		124 IBLA 200 (Oct. 21, 1992)
	315b -----	124 IBLA 176 (Oct. 13, 1992)
	321 -----	124 IBLA 363 (Dec. 8, 1992)
	321-339 -----	124 IBLA 363 (Dec. 8, 1992)
	322 -----	124 IBLA 363 (Dec. 8, 1992)
	327 -----	124 IBLA 363 (Dec. 8, 1992)
	328 -----	124 IBLA 363 (Dec. 8, 1992)
	387 -----	9 OHA 137 (Mar. 19, 1992)
	441 -----	124 IBLA 196 (Oct. 20, 1992)
	869 -----	123 IBLA 150 (May 28, 1992)
	869-869-4 -----	123 IBLA 150 (May 28, 1992)
	869-2 -----	123 IBLA 150 (May 28, 1992)
	869-2(b)(1) -----	123 IBLA 150 (May 28, 1992)
	869-2(b)(2) -----	123 IBLA 150 (May 28, 1992)
	869-2(b)(6) -----	123 IBLA 150 (May 28, 1992)
	869-2(b)(7) -----	123 IBLA 150 (May 28, 1992)
	932 -----	122 IBLA 275 (Mar. 5, 1992)
		124 IBLA 7 (Aug. 13, 1992)

TITLE 43 CONT.

sec.	945	-----	124	IBLA	336	(Nov. 18, 1992)
	946	-----	124	IBLA	353	(Dec. 4, 1992)
	948	-----	124	IBLA	353	(Dec. 4, 1992)
	959	-----	124	IBLA	353	(Dec. 4, 1992)
	1068	-----	123	IBLA	354	(July 20, 1992)
	1068-1068b	-----	123	IBLA	354	(July 20, 1992)
	1166	-----	124	IBLA	386	(Dec. 10, 1992)
	1181a	-----	122	IBLA	362	(Mar. 20, 1992)
	1181a-1181f	-----	122	IBLA	53	(Jan. 9, 1992)
	1181b	-----	122	IBLA	362	(Mar. 20, 1992)
	1181d-1181f	-----	122	IBLA	362	(Mar. 20, 1992)
	1201	-----	123	IBLA	96	(May 12, 1992)
	1331	-----	125	IBLA	1	(Dec. 10, 1992)
	1331-1356	-----	123	IBLA	229	(June 8, 1992)
			123	IBLA	361	(July 21, 1992)
			123	IBLA	7	(Dec. 10, 1992)
	1339	-----	123	IBLA	229	(June 8, 1992)
			124	IBLA	206	(Oct. 22, 1992)
			125	IBLA	1	(Dec. 10, 1992)
			125	IBLA	7	(Dec. 10, 1992)
	1339(a)	-----	124	IBLA	206	(Oct. 22, 1992)
			125	IBLA	1	(Dec. 10, 1992)
			125	IBLA	7	(Dec. 10, 1992)
	1411-1418	-----	123	IBLA	330	(July 10, 1992)
	1542	-----	22	IBIA	220	(Aug. 14, 1992)
	1601	-----	123	IBLA	109	(May 18, 1992)
			9	OHA	143, 99 I.D.	31 (1992)
	1601(a)	-----	122	IBLA	375	(Apr. 2, 1992)
	1601(b)	-----	122	IBLA	375	(Apr. 2, 1992)
	1602(a)	-----	122	IBLA	375	(Apr. 2, 1992)
	1602(d)	-----	122	IBLA	375	(Apr. 2, 1992)
	1602(e)	-----	123	IBLA	109	(May 18, 1992)
			9	OHA	143, 99 I.D.	31 (1992)
	1604	-----	122	IBLA	375	(Apr. 2, 1992)
	1604(c)	-----	122	IBLA	375	(Apr. 2, 1992)
	1606(c)	-----	122	IBLA	375	(Apr. 2, 1992)
	1606(f)	-----	122	IBLA	375	(Apr. 2, 1992)
	1606(h)(2)(A)	-----	22	IBIA	261	(Sept. 1, 1992)
	1607(c)	-----	22	IBIA	261	(Sept. 1, 1992)
	1610	-----	9	OHA	143, 99 I.D.	31 (1992)
	1610(a)(1)	-----	123	IBLA	109	(May 18, 1992)
	1610(a)(1)(A)	-----	124	IBLA	349	(Dec. 2, 1992)
	1610(a)(2)	-----	123	IBLA	109	(May 18, 1992)
	1610(b)	-----	9	OHA	143, 99 I.D.	31 (1992)
	1610(b)(1)	-----	122	IBLA	375	(Apr. 2, 1992)
	1611	-----	123	IBLA	109	(May 18, 1992)
	1611(a)	-----	123	IBLA	109	(May 18, 1992)
	1613	-----	124	IBLA	57	(Aug. 27, 1992)
	1613(c)(1)	-----	124	IBLA	57	(Aug. 27, 1992)
	1613(h)(2)	-----	122	IBLA	375	(Apr. 2, 1992)

TITLE 43 CONT.

sec. 1613(h) (4) -----	122 IBLA 375 (Apr. 2, 1992)
1616(b) -----	123 IBLA 109 (May 18, 1992)
	123 IBLA 233 (June 9, 1992)
1616(d) -----	9 OHA 143, 99 I.D. 31 (1992)
1616(d) (1) -----	9 OHA 143, 99 I.D. 31 (1992)
1616(d) (2) -----	9 OHA 143, 99 I.D. 31 (1992)
1616(d) (3) -----	9 OHA 143, 99 I.D. 31 (1992)
1617 -----	122 IBLA 209 (Feb. 12, 1992)
	124 IBLA 1 (Aug. 13, 1992)
	124 IBLA 386 (Dec. 10, 1992)
1617(a) -----	122 IBLA 30 (Jan. 3, 1992)
	122 IBLA 109 (Jan. 14, 1992)
	122 IBLA 344 (Mar. 11, 1992)
	123 IBLA 6 (Apr. 22, 1992)
	123 IBLA 233 (June 9, 1992)
	124 IBLA 57 (Aug. 27, 1992)
	124 IBLA 294 (Nov. 4, 1992)
	124 IBLA 336 (Nov. 18, 1992)
	124 IBLA 386 (Dec. 10, 1992)
1624 -----	122 IBLA 375 (Apr. 2, 1992)
1634 -----	124 IBLA 1 (Aug. 13, 1992)
	124 IBLA 57 (Aug. 27, 1992)
1634(a) -----	122 IBLA 30 (Jan. 3, 1992)
	122 IBLA 109 (Jan. 14, 1992)
	124 IBLA 1 (Aug. 13, 1992)
	124 IBLA 57 (Aug. 27, 1992)
	124 IBLA 349 (Dec. 2, 1992)
	124 IBLA 386 (Dec. 10, 1992)
1634(a) (1) -----	122 IBLA 109 (Jan. 14, 1992)
	122 IBLA 209 (Feb. 12, 1992)
	123 IBLA 6 (Apr. 22, 1992)
	123 IBLA 233 (June 9, 1992)
	124 IBLA 294 (Nov. 4, 1992)
	124 IBLA 336 (Nov. 18, 1992)
	124 IBLA 386 (Dec. 10, 1992)
1634(a) (3) -----	122 IBLA 209 (Feb. 12, 1992)
1634(a) (4) -----	124 IBLA 1 (Aug. 13, 1992)
	124 IBLA 349 (Dec. 2, 1992)
1634(a) (5) -----	122 IBLA 209 (Feb. 12, 1992)
	123 IBLA 233 (June 9, 1992)
	124 IBLA 57 (Aug. 27, 1992)
	124 IBLA 294 (Nov. 4, 1992)
	124 IBLA 386 (Dec. 10, 1992)
1634(a) (5) (B) -----	123 IBLA 233 (June 9, 1992)
1634(a) (5) (C) -----	122 IBLA 109 (Jan. 14, 1992)
1634(c) -----	122 IBLA 109 (Jan. 14, 1992)
	124 IBLA 57 (Aug. 27, 1992)
1635 -----	9 OHA 143, 99 I.D. 31 (1992)
1635(c) -----	9 OHA 143, 99 I.D. 31 (1992)
1635(c) (1) -----	123 IBLA 156 (May 28, 1992)

TITLE 43 CONT.

sec.	1635(c)(2) -----	123	IBLA	156	(May 28, 1992)
	1635(c)(3) -----	123	IBLA	156	(May 28, 1992)
	1635(c)(4) -----	9	OHA	143, 99	I.D. 31 (1992)
	1635(i) -----	123	IBLA	156	(May 28, 1992)
	1701 -----	122	IBLA	65	(Jan. 9, 1992)
		122	IBLA	334	(Mar. 11, 1992)
		123	IBLA	377	(July 23, 1992)
		124	IBLA	67	(Sept. 2, 1992)
		124	IBLA	191	(Oct. 15, 1992)
	1701-1782 -----	123	IBLA	96	(May 12, 1992)
	1701-1784 -----	122	IBLA	53	(Jan. 9, 1992)
		122	IBLA	131	(Jan. 27, 1992)
		122	IBLA	165	(Feb. 7, 1992)
		122	IBLA	362	(Mar. 20, 1992)
		123	IBLA	68	(May 11, 1992)
	1701 <u>et seq.</u> -----	124	IBLA	67	(Sept. 2, 1992)
		124	IBLA	125	(Sept. 28, 1992)
	1701(a) -----	122	IBLA	53	(Jan. 9, 1992)
	1701(a)(7) -----	122	IBLA	165	(Feb. 7, 1992)
		125	IBLA	15	(Dec. 17, 1992)
	1701(a)(8) -----	125	IBLA	15	(Dec. 17, 1992)
	1701(a)(9) -----	124	IBLA	7	(Aug. 13, 1992)
	1702 -----	122	IBLA	334	(Mar. 11, 1992)
	1702(c) -----	125	IBLA	15	(Dec. 17, 1992)
	1702(d) -----	123	IBLA	142	(May 28, 1992)
	1702(j) -----	122	IBLA	375	(Apr. 2, 1992)
	1711 -----	122	IBLA	334	(Mar. 11, 1992)
	1712 -----	122	IBLA	17	(Jan. 2, 1992)
		122	IBLA	334	(Mar. 11, 1992)
	1712(a) -----	122	IBLA	165	(Feb. 7, 1992)
		125	IBLA	15	(Dec. 17, 1992)
	1712(c) -----	122	IBLA	165	(Feb. 7, 1992)
	1712(e) -----	125	IBLA	15	(Dec. 17, 1992)
	1712(f) -----	123	IBLA	142	(May 28, 1992)
	1713 -----	123	IBLA	150	(May 28, 1992)
		124	IBLA	130	(Sept. 30, 1992)
	1716 -----	122	IBLA	244	(Feb. 26, 1992)
		122	IBLA	250	(Feb. 28, 1992)
		123	IBLA	150	(May 28, 1992)
		124	IBLA	44	(Aug. 26, 1992)
		124	IBLA	104	(Sept. 17, 1992)
	1716(a) -----	122	IBLA	244	(Feb. 26, 1992)
	1716(b) -----	122	IBLA	250	(Feb. 28, 1992)
	1716(g) -----	122	IBLA	250	(Feb. 28, 1992)
	1719(a) -----	122	IBLA	244	(Feb. 26, 1992)
	1719(b) -----	122	IBLA	255	(Feb. 28, 1992)
		123	IBLA	51, 99	I.D. 64 (1992)
	1719(b)(1) -----	122	IBLA	255	(Feb. 28, 1992)
		123	IBLA	51, 99	I.D. 64 (1992)
	1719(b)(2) -----	123	IBLA	51, 99	I.D. 64 (1992)

TITLE 43 CONT.

sec. 1732(a) -----	125 IBLA 15 (Dec. 17, 1992)
1732(b) -----	122 IBLA 330 (Mar. 11, 1992)
	123 IBLA 314 (June 29, 1992)
	124 IBLA 7 (Aug. 13, 1992)
	124 IBLA 155 (Sept. 30, 1992)
	124 IBLA 191 (Oct. 15, 1992)
	124 IBLA 242 (Nov. 2, 1992)
	124 IBLA 325 (Nov. 6, 1992)
	125 IBLA 15 (Dec. 17, 1992)
1732(c) -----	124 IBLA 267 (Nov. 3, 1992)
1733 -----	123 IBLA 20 (Apr. 24, 1992)
1739(e) -----	123 IBLA 142 (May 28, 1992)
1740 -----	123 IBLA 20 (Apr. 24, 1992)
1744 -----	122 IBLA 357 (Mar. 19, 1992)
	124 IBLA 122 (Sept. 24, 1992)
	124 IBLA 247 (Nov. 2, 1992)
	124 IBLA 318 (Nov. 4, 1992)
1744(a) -----	122 IBLA 68 (Jan. 10, 1992)
	122 IBLA 357 (Mar. 19, 1992)
1744(b) -----	123 IBLA 188 (May 19, 1992)
	123 IBLA 27, 99 I.D. 55 (1992)
	123 IBLA 330 (July 10, 1992)
	124 IBLA 344 (Dec. 1, 1992)
1744(c) -----	122 IBLA 357 (Mar. 19, 1992)
	123 IBLA 118 (May 19, 1992)
	124 IBLA 122 (Sept. 24, 1992)
1746 -----	9 OHA 143, 99 I.D. 31 (1992)
1751-1753 -----	122 IBLA 77 (Jan. 14, 1992)
	123 IBLA 80 (May 11, 1992)
	124 IBLA 176 (Oct. 13, 1992)
	124 IBLA 200 (Oct. 21, 1992)
1752(d) -----	123 IBLA 142 (May 28, 1992)
1761 -----	122 IBLA 200 (Feb. 10, 1992)
	124 IBLA 225 (Oct. 27, 1992)
1761-1771 -----	122 IBLA 349 (Mar. 12, 1992)
	123 IBLA 20 (Apr. 24, 1992)
	123 IBLA 295 (June 23, 1992)
	124 IBLA 7 (Aug. 13, 1992)
	124 IBLA 358 (Dec. 4, 1992)
1761(a) -----	124 IBLA 7 (Aug. 13, 1992)
1764(g) -----	122 IBLA 200 (Feb. 10, 1992)
	122 IBLA 349 (Mar. 12, 1992)
	123 IBLA 295 (June 23, 1992)
	124 IBLA 358 (Dec. 4, 1992)
1766 -----	122 IBLA 349 (Mar. 12, 1992)
1782 -----	122 IBLA 123 (Jan. 24, 1992)
	123 IBLA 68 (May 11, 1992)
	124 IBLA 155 (Sept. 30, 1992)

TITLE 43 CONT.

sec. 1782(a) -----	122	IBLA	131	(Jan. 27, 1992)
	122	IBLA	165	(Feb. 7, 1992)
	122	IBLA	334	(Mar. 11, 1992)
	124	IBLA	155	(Sept. 30, 1992)
1782(c) -----	122	IBLA	131	(Jan. 27, 1992)
	124	IBLA	7	(Aug. 13, 1992)
	124	IBLA	155	(Sept. 30, 1992)
2808.1(a) -----	123	IBLA	20	(Apr. 24, 1992)
4332(2)(C) -----	122	IBLA	17	(Jan. 2, 1992)

TITLE 49:

sec. 1671-1687 -----	122	IBLA	224, 99 I.D.	20 (1992)
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ACT OF MARCH 3, 1891

Where a right-of-way grant issued under the Act of Mar. 3, 1891, does not contain provisions expressly mandating the filing of proof of construction of required improvements, failure to file does not, by itself, justify cancellation of the right-of-way.

The holder of a right-of-way issued under the Act of Mar. 3, 1891, is entitled to a factfinding hearing prior to cancellation for failure to construct improvements within 5 years of issuance as required by sec. 20 of that Act, where the case record does not demonstrate that improvements were not timely constructed, and where the right-of-way holder has expressly asserted that construction has been completed. In such hearing, BLM, as the proponent of the invalidity of the right-of-way, has the burden of proving that authorized improvements were not timely constructed.

John C. Urquidi, 124 IBLA 353 (Dec. 4, 1992)

ACT OF MARCH 3, 1909

The assignment of the obligation to make royalty payments is not related to an assignment of a lease or an interest in a lease that must be approved by BIA under 25 CFR 212.22.

Mesa Operating Ltd Partnership, 125 IBLA 28 (Dec. 31, 1992) 99 I.D. 272

ACT OF MARCH 20, 1911

Lands conveyed to the U.S. under 16 U.S.C. § 485 (1988), become, upon acceptance of title, a part of the national forest within whose external boundaries they are located. The Office of the General Counsel for the U.S. Dept. of Agriculture has stated that acceptance of title is not final until the final title opinion is issued by that office. It is therefore the date on which the Office of the General Counsel accepts title

ACT OF MARCH 20, 1911--Continued

that determines when exchanged land is subject to location of mining claims.

Robert S. Glenn, DeLoyd Cazier, 124 IBLA 104 (Sept. 17, 1992)

ACT OF DECEMBER 29, 1916

In determining the appropriate amount of a bond for the protection of the owner of the surface estate of land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. §§ 291-301 (1976), BLM properly considers possible damages from projected mining operations within the entirety of the mining claims sought to be re-entered and occupied, relying on the current value of tangible improvements and of the projected lost grazing use of that land from such operations and subsequent reclamation. However, where BLM improperly discounts the value of future lost grazing use, the Board will recompute that value and set the proper bond amount.

William C. Hayes et ux., 122 IBLA 68 (Jan. 10, 1991)

ACT OF AUGUST 11, 1955

Locators of claims on land opened under 30 U.S.C. § 621(a) (1988), have been required by 30 U.S.C. § 623 (1988), to file copies of their location notices with BLM within 1 year after Aug. 11, 1955, for all locations previously made, or within 60 days of location for locations thereafter made.

The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1988), authorizes the location and patent of mining claims on public lands withdrawn for power purposes. However, the Department may hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land and may issue an order providing for one of the following three alternatives: (1) a complete prohibition on placer mining; (2) permission to engage in placer mining upon the condition that the locator shall restore

ACT OF AUGUST 11, 1955--Continued

the surface of the claim; or (3) a general permission to engage in placer mining.

Where a copy of the notice of location of a mining claim on land withdrawn for powersite purposes was not recorded with BLM within the time prescribed by 30 U.S.C. § 623 (1988), a notice of intent from BLM to conduct a hearing under sec. 621(b) will not be considered untimely if the notice of intent was issued within 60 days after receipt of some affirmative acknowledgement by the owner of the claim that the claim was subject to that provision of the Act.

To determine whether mining would "substantially interfere" with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1988), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of mining outweigh the benefits from other uses.

In making a determination whether placer mining operations would substantially interfere with other uses of powersite lands, the party who seeks to restrict or prohibit placer mining bears the initial burden of presenting a prima facie case. The burden then shifts to the mining claimant to overcome the case so proved by a preponderance of the evidence.

United States v. Phyrne Brown, 124 IBLA 247 (Nov. 2, 1992)

ADMINISTRATIVE AUTHORITY

(See also Delegation of Authority, Federal Employees & Officers, Secretary of the Interior)

GENERALLY

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

Anadarko Petroleum Corp., 122 IBLA 141 (Feb. 3, 1992)

Where the Colorado State Director, BLM, issued a decision approving a record of decision for an EIS regarding a vegetative treatment program for 13 western states, insofar as it related to public lands administered by BLM in Colorado, and the Ass't Secretary, Land and Minerals Management, subsequently concurred in selection of the vegetative treatment program, that concurrence amounted to Secretarial approval of the vegetative treatment program for BLM lands in 13 western states, including Colorado. Accordingly, the Board of Land Appeals lacks jurisdiction to consider an appeal of the Colorado State Director's decision file subsequent to the Ass't Secretary's action.

The Wilderness Society, 122 IBLA 162 (Feb. 6, 1992)

The burden to establish that there are engineering, geologic, or economic reasons to justify venting or flaring gas from an oil well rests with the lessee who appeals a decision that there has been avoidable waste as a result of such venting or flaring. Where no proof is offered by the lessee to support allegations that there was a danger of drainage, relief cannot be afforded. Arguments that assessment for avoidably lost gas were barred by laches or limitations of action cannot be considered favorably where the lessee was timely

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

notified of an audit that indicated avoidable loss was occurring, even though subsequent review of the matter was protracted.

Proper application of IM 87-652 required that BLM evaluate whether, if an application to flare gas had been made for oil wells produced by the lessee prior to flaring, the application would have been entitled to approval on the merits.

Maxus Exploration Co., 122 IBLA 190 (Feb. 10, 1992)

So long as the legal title to public lands remains in the United States, the Department has the power, after proper notice and hearing, to inquire into the propriety of conveying the land, at any time prior to the issuance of patent.

Mary Johansen, 122 IBLA 344 (Mar. 11, 1992)

In order to correct prior error, an official of the BIA may change an administrative interpretation of a statute as long as the reason for the change is clearly set forth to show that the departure from the prior administrative position is not arbitrary or capricious.

Hopi Indian Tribe v. Director, Office of Trust & Economic Development, Bureau of Indian Affairs, 22 IBIA 10 (Apr. 7, 1992)

When unpatented mining claims have been donated to the NPS by quitclaim deed and the record before BLM discloses a dispute regarding the chain of title to the claims or the existence of encumbrances upon title to the claims, neither the regulations applicable to mining claims recordation nor the regulations governing acceptance of donated interests in real property authorizes

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

BLM to adjudicate title to the claims and a decision purporting to do so is properly vacated.

David J. Bartoli, 123 IBLA 27 (Apr. 29, 1992)
99 I.D. 55

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

Benson-Montin-Greer Drilling Corp., 123 IBLA 341
(July 15, 1992) 99 I.D. 115

Lands conveyed to the U.S. under 16 U.S.C. § 485 (1988), become, upon acceptance of title, a part of the national forest within whose external boundaries they are located. The Office of the General Counsel for the U.S. Dept. of Agriculture has stated that acceptance of title is not final until the final title opinion is issued by that office. It is therefore the date on which the Office of the General Counsel accepts title that determines when exchanged land is subject to location of mining claims.

Robert S. Glenn, DeLoyd Cazier, 124 IBLA 104 (Sept. 17, 1992)

A statute establishing time limitations for commencement of civil actions for damages by the United States does not apply to limit administrative action by the Department.

BHP Petroleum (Americas) Inc., 124 IBLA 185 (Oct. 14, 1992)

ADMINISTRATIVE PRACTICE

Where BLM issues a decision denying the assignment of a salt water disposal right-of-way and such decision is merely conclusory in nature, the record is barren of any supporting rationale, and other unaddressed issues are presented, the decision will be set aside and the case remanded for BLM to reassess assignment of the right-of-way and determine what steps are necessary for the protection of the Federal mineral interest in the land in question.

Burnett Oil Co., Inc., 122 IBLA 330 (Mar. 11, 1992)

ADMINISTRATIVE PROCEDURE

(See also Appeals, Confidential Information, Contests & Protests, Hearings, Judicial Review, Public Records, Regulations, Rules of Practice)

GENERALLY

A letter from counsel for OWM to an operator that (1) speaks only of "considering the possibility of settlement," (2) cautions that remedial action required by the NOV's must be completed and failure-to-abate CO's terminated before any settlement can be negotiated, and (3) invites the operator to contact him after completion of reclamation if it is still interested in settlement, creates no basis on which the operator may reasonably rely that OSM agreed that the civil penalties for the NOV's would be settled when reclamation was completed. Where an offer to settle is made by counsel for OSM following completion of reclamation, but is not accepted by the operator, there is no basis to consider estopping OSM from collecting civil penalties for the NOV's.

J&M Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 90 (Jan. 14, 1992)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

Unless otherwise specified, a decision of the Board of Indian Appeals remanding a matter to an official of the BIA restores that official's full authority to consider the matter.

Stone Trucking v. Portland Area Director, Bureau of Indian Affairs, 22 IBIA 52 (May 5, 1992)

A Federal agency has a responsibility to explain the rationale and factual basis for decisions affecting persons dealing with the agency. Failure to provide such information is a violation of due process.

Quileute Tribe v. Portland Area Director, Bureau of Indian Affairs, 23 IBIA 20 (Oct. 29, 1992)

ADJUDICATION

An appeal from an order establishing a reclamation bond for a mining operation becomes moot if, during appeal, the plan expires or is modified.

Jim D. Wills, Reggie N. Wills, 123 IBLA 74 (May 11, 1992)

ADMINISTRATIVE PROCEDURE ACT

An agency may establish a rule of law by adjudication. If such a rule has not been established by adjudication, then, in order for it to have the force and effect of law and be binding on the agency as well as the public, it must be a substantive rule affecting individual rights and obligations that has been issued by the agency pursuant to statutory authority and promulgated in accordance with the rulemaking requirements

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE PROCEDURE ACT--Continued

of the APA, 5 U.S.C. § 553 (1988), or other procedural requirements imposed with Congress.

Robert S. Glenn, DeLoyd Cazier, 124 IBLA 104 (Sept. 17, 1992)

ADMINISTRATIVE RECORD

When the BIA denies an application for a U.S. Direct Loan, the administrative record and the decision, when read together, must show how the Bureau reached its conclusions.

Charles McCloud v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 21 IBIA 254 (Mar. 18, 1992)

ADMINISTRATIVE REVIEW

An appellant who does not with some particularity show adequate reason for appeal, and, as appropriate, support the allegation with argument or evidence showing error, cannot be afforded favorable consideration. Conclusory allegations of error, standing alone, do not suffice.

Glanville Farms, Inc. v. Bureau of Land Management, 122 IBLA 77 (Jan. 14, 1992)

Where the Colorado State Director, BLM, issued a decision approving a record of decision for an EIS regarding a vegetative treatment program for 13 western states, insofar as it related to public lands administered by BLM in Colorado, and the Ass't Secretary, Land and Minerals Management, subsequently concurred in

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

selection of the vegetative treatment program, that concurrence amounted to Secretarial approval of the vegetative treatment program for BLM lands in 13 western states, including Colorado. Accordingly, the Board of Land Appeals lacks jurisdiction to consider an appeal of the Colorado State Director's decision file subsequent to the Ass't Secretary's action.

The Wilderness Society, 122 IBLA 162 (Feb. 6, 1992)

When OSM and a coal miner agree that OSM will suspend enforcement of SMCRA while the miner pursues litigation in Federal court to determine whether a Federal coal mining permit is needed, enforcement may proceed when the Federal court litigation is ended.

Gabriel Energy Corp. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 316 (Mar. 11, 1992)

Review of the merits of a trespass case may be expedited by the Board where the decision is made effective by regulation pending appeal and review of a motion for stay discloses a conflict between the threat of injury to the appellant and the threat of adverse effect to the public interest.

High Desert Communications, Inc., 123 IBLA 20 (Apr. 24, 1992)

The Board will not substitute its judgment for that of the duly authorized BLM official exercising discretion to reject a special recreation permit application on the ground that it conflicts with BLM objectives, responsibilities, or program for management of the public lands involved where the facts of record support the decision. However, where two criminal convictions which were substantially relied upon as a basis for the BLM decision are reversed on appeal subsequent to the

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

BLM decision, and the record contains little factual detail of the basis for rejection, the case is properly remanded.

Red Rock Hounds, Inc., 123 IBLA 314 (June 29, 1992)

The Board of Indian Appeals will consider the merits of an arguably moot appeal when the matter concerns a potentially recurring question raised by a short-term order capable of repetition, yet evading review.

Cherokee Nation of Oklahoma, Chickasaw Nation, & Choctaw Nation of Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 240 (Aug. 24, 1992)

A BLM decision implementing a final project plan for the development of a recreation site on public land will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, absent a showing of clear reasons of modification or reversal.

Gerry Zamora, Joe Zamora, 125 IBLA 10 (Dec. 14, 1992)

BURDEN OF PROOF

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of is erroneous or not supported by substantial evidence.

All Materials of Montana, Inc. v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 202 (Feb. 27, 1992)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, Bureau of Indian Affairs, 22 IBIA 153 (June 26, 1992)

Maurice & Brian Schwan v. Aberdeen Area Director, Bureau of Indian Affairs, 23 IBIA 10 (Oct. 29, 1992)

When a challenge is raised to a discretionary decision issued by a BIA official under 25 CFR Chapter I, the appellant bears the burden of showing that the official did not properly exercise discretion.

John Ross, Jr. v. Acting Muskogee Area Director, Bureau of Indian Affairs, 21 IBIA 251 (Mar. 18, 1992)

DECISIONS

Where BLM issues a decision denying the assignment of a salt water disposal right-of-way and such decision is merely conclusory in nature, the record is barren of any supporting rationale, and other unaddressed issues are presented, the decision will be set aside and the case remanded for BLM to reassess assignment of the right-of-way and determine what steps are necessary for the protection of the Federal mineral interest in the land in question.

Burnett Oil Co., Inc., 122 IBLA 330 (Mar. 11, 1992)

A letter signed by a BIA official in which the official states that he or she cannot make a decision in a pending matter because of insufficient or inadequate

ADMINISTRATIVE PROCEDURE--Continued

DECISIONS--Continued

information is subject to administrative review under 25 CFR Part 2 and 43 CFR Part 4, Subpart D.

Pinoleville Indian Community Governing Council v. Sacramento Area Director, Bureau of Indian Affairs, 22 IBIA 176 (July 16, 1992)

HEARINGS

Due process does not require that an evidentiary hearing be provided prior to cancellation of a lease of Indian land.

The Board of Indian Appeals will not order an evidentiary hearing under 43 CFR 4.337(a) where there is no need for further inquiry to resolve a genuine issue of material fact. The party requesting that the Board order an evidentiary hearing must affirmatively show the existence of a controversy concerning a genuine issue of material fact, the resolution of which is necessary for a decision in the appeal.

All Materials of Montana, Inc. v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 202 (Feb. 27, 1992)

Where, after final proof of use and occupancy has been filed and equitable title has passed to the applicant, BLM determines that the land in the application is not subject to conveyance because it is mineral in character, e.g., valuable for placer gold, it may not reject the application without affording the applicant notice and an opportunity to contest the mineral-in-character classification, as required by Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

Mary Johansen, 122 IBLA 344 (Mar. 11, 1992)

ADMINISTRATIVE PROCEDURE--Continued

STANDING

Where an appellant makes no colorable allegation of adverse effect, but solely alleges injury to environmental informational interests (deprivation of information guaranteed by a Federal statute), it has not established that it was adversely affected within the meaning of 43 CFR 4.410(a), and its appeal is properly dismissed for lack of standing. A mere general interest in a problem, absent colorable allegations of adverse effect, is insufficient to confer standing.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83 (Sept. 15, 1992)

An organization need not be incorporated in order to have standing to appeal under 25 CFR Part 2.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

ALASKA

LAND GRANTS AND SELECTIONS

Under subsec. 906(c)(1) of ANILCA, 43 U.S.C. § 1635(c)(1) (1988), when land has been tentatively approved for transfer to the State of Alaska, legal title has been conveyed and the Department no longer possesses jurisdiction over the land and has no authority to affect title to it.

Eddie S. Beroldo, Robert L. Miller, Jo Ann Miller, 123 IBLA 156 (May 28, 1992)

ALASKA--Continued

NATIVE ALLOTMENTS

Sec. 905(a)(1) of ANILCA, 43 U.S.C. § 1634(a) (1988), provides that all Native allotment applications which were pending before the Department on or before Dec. 18, 1971, are approved on the 180th day following the effective date of the Act, unless otherwise provided by other paragraphs or subsections of that section. An application is pending on or before Dec. 18, 1971, where the application is filed in 1960 and closed in 1966 for failure to provide any proof of use and occupancy, but the applicant is not notified by decision of the closure and the BLM field report discloses an issue of fact as to applicant's exclusive use or occupancy. Under such circumstances, BLM erred in rejecting an applicant's request that his Native allotment application be reinstated and either approved or adjudicated pursuant to sec. 905(a) of ANILCA.

Andrew Balluta, 122 IBLA 30 (Jan. 3, 1992)

Reinstatement is properly denied for an allotment application terminated by operation of law pursuant to 43 CFR 2212.9-3(f) (1968) for failure to file proof of use and occupancy within 6 years after filing the application when the decedent's use and occupancy had begun less than 1 year before the application was filed.

A hearing is not required where rejection of a Native allotment application is made, not in reliance on a disputed question of fact, but as a matter of law.

Heirs of a Native allotment applicant may not, under sec. 905(c) of ANILCA, 43 U.S.C. § 1634(c) (1988), amend the land description in their decedent's allotment application to encompass land in addition to that originally described.

Heirs of Edward Peter, 122 IBLA 109 (Jan. 14, 1992)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The Secretary may allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska. Land is mineral in character when known conditions at the relevant time are such as to reasonably engender the belief that the land contains mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end.

The Department has held that the critical time for determination of whether the land in a nonmineral entry is mineral in character is the time when equitable title vests. With respect to Native allotments, this occurs when the Department has approved the allotment application after completion of the required period of qualifying use and occupancy.

Where an application for patent is filed by a non-mineral claimant which embraces public lands within the boundaries of mineral claims located under the mining laws, the rights of the mining claimants must be considered prior to any ultimate disposition of the land. In such a context, a hearing is properly ordered upon notice to the competing nonmineral and mining claimants for the purpose of determining the character of the land claimed.

Anne Lynn Purdy, Heirs of Arthur Purdy, Sr., 122 IBLA
209 (Feb. 12, 1992)

Where the United States completes a mineral-in-character report after equitable title has passed to the Native allotment applicant, the determinative date for that report is the date of passage of equitable title, and BLM must establish that the facts in existence at the time equitable title passed required a determination that the land was mineral in character.

Where, after final proof of use and occupancy has been filed and equitable title has passed to the applicant, BLM determines that the land in the application is not subject to conveyance because it is mineral in

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

character, e.g., valuable for placer gold, it may not reject the application without affording the applicant notice and an opportunity to contest the mineral-in-character classification, as required by Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

Mary Johansen, 122 IBLA 344 (Mar. 11, 1992)

A Native allotment application filed pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. § 270-1 - 270-3 (1970), is properly rejected when the applicant failed to establish that qualifying use and occupancy was independently initiated. Use and occupancy as a minor child in the company of and under the supervision of one's parents is not considered independent.

United States v. Mary T. Akootchook, Betty Brower, 123 IBLA 6 (Apr. 22, 1992)

A Government contest of a Native allotment application is appropriate when the application bears date-stamps well beyond the Dec. 18, 1971, filing deadline and the applicant's evidence of timeliness consists solely of a two-page BIA form letter, page 1 of which acknowledges receipt of an unspecified Native allotment application and page 2 of which consists only of the applicant's name, address, and a date within the deadline.

A Government contest of a Native allotment application is appropriate when the record reveals that a road in public use crosses lands described by the application, thus calling into question whether the applicant has established notorious, exclusive, and continuous use and occupancy of the lands.

State of Alaska (Mabel S. Brown), 123 IBLA 233 (June 9, 1992)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where a Native allotment applicant has filed a Native allotment application prior to Dec. 18, 1971, and BLM rejected the application in 1968 without affording him an opportunity for a hearing, the rejection decision is not final and the application may be reinstated. Where the application is reinstated, it is properly deemed to be "pending" before the Department on Dec. 18, 1971, within the meaning of sec. 905(a) of ANILCA.

A Native allotment application pending before the Department on Dec. 18, 1971, was not legislatively approved under sec. 905(a)(1) of ANILCA where it describes land which was validly selected by the State of Alaska pursuant to the Alaska Statehood Act on or before Dec. 18, 1971. Instead, the application must be adjudicated pursuant to the requirements of the Native Allotment Act.

Heirs of George Titus, 124 IBLA 1 (Aug. 13, 1992)

When BLM changes the location of a Native allotment claim from its originally intended location during the course of the survey of the claim boundaries to compensate for the loss of a portion of the original claim by erosion, and confirms the legislative approval of the claim in its new location, the Board will set aside the BLM decision and remand the case for resurvey and reconfirmation of the legislative approval of the claim in its original location.

Hermann T. Kroener, 124 IBLA 57 (Aug. 27, 1992)

Sec. 905(a)(1) of ANILCA, 43 U.S.C. § 1634(a)(1) (1988), provided for legislative approval, subject to valid existing rights, of all Alaska Native allotment applications, with certain caveats, one of which was

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

that the section applied only to applications which described land that was unreserved on Dec. 13, 1968. Where land described in a Native allotment application was reserved on Dec. 13, 1968, legislative approval does not apply.

Where the Government contests a Native allotment application, the Native is required to make satisfactory proof, by a preponderance of the evidence, of substantially continuous use and occupancy of the claimed land for a minimum of 5 years. Such use and occupancy contemplates substantial actual possession and use of the land, at least potentially exclusive of others.

Where the evidence presented at a hearing on a Government contest of a Native allotment application in support of the Native's position that he utilized the claimed lands for fishing and hunting in accordance with the customs of the Natives of the area fails to show substantial actual possession and use of the claimed land, the application is properly rejected.

Even if the evidence presented at a hearing on a Government contest of a Native allotment application could be considered as establishing substantial actual possession and use of the available claimed lands, the application will be rejected where the evidence shows that the Native's use of the land was not potentially exclusive of others because he was one of many Natives who utilized the claimed lands for subsistence activities during the period of claimed use and occupancy and there was not evidence that the applicant had recognized authority over the land during that period.

United States v. Zack Rastopsoff (Deceased), Ayakulik, Inc. (Intervenor/Appellant), 124 IBLA 294 (Nov. 4, 1992)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

A Native allotment application deemed pending before the Department on Dec. 18, 1971, because it was rejected in 1927 without affording the applicant's heirs an opportunity for a hearing on a disputed question of fact underlying the rejection was not legislatively approved by sec. 905(a) of ANILCA but instead must be adjudicated pursuant to the Act of May 17, 1906 as amended, because the land was validly selected by the State before Dec. 18, 1971, and was not withdrawn pursuant to sec. 11(a)(1)(A) of ANCSA.

Ellen Frank, 124 IBLA 349 (Dec. 2, 1992)

Where, after a Native initiates use and occupancy of certain lands and files an allotment application but prior to the completion of 5 years' use and occupancy, rights-of-way are sought and granted by BLM across such lands, subject to valid existing rights, the completion of the requisite 5 years vests the inchoate preference right arising from use and occupancy. That right relates back to the initiation of use and occupancy, thereby taking precedence over the intervening rights-of-way, which are properly declared null and void.

State of Alaska, Dept. of Transportation & Public Facilities, 124 IBLA 386 (Dec. 10, 1992)

Where, after a Native initiates use and occupancy of certain lands, a right-of-way is sought and granted by BLM across such lands, subject to valid existing rights, the later filing of the allotment application vests the inchoate preference right arising from use and occupancy, and that right relates back to the initiation of use and occupancy, thereby taking precedence over the intervening right-of-way, which is properly declared null and void.

State of Alaska, 125 IBLA 21 (Dec. 21, 1992)

ALASKA--Continued

REINDEER

The Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), was not repealed by the Alaska Statehood Act, 72 Stat. 339.

The legislative history of the Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), makes it clear that Congress intended to reserve the reindeer industry in Alaska for the exclusive benefit of Alaska Natives.

Courts commonly give deference to the construction of a statute by the agency charged with its administration, particularly one which was contemporaneous with the statute and has been consistently followed by the agency.

Ambiguities in the Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), must be construed in favor of the Alaska Natives who are the intended beneficiaries of the Act.

In a case where the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters, the intention of the drafters, rather than the strict language, controls.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

STATEHOOD ACT

Pursuant to sec. 906(c) of ANILCA, 43 U.S.C. § 1635(c) (1988), all right, title, and interest of the United States in and to selected lands is deemed to have vested in the State of Alaska as of the date of tentative approval. Subsequent to such a tentative approval,

ALASKA--Continued

STATEHOOD ACT--Continued

the Secretary of the Interior no longer retains jurisdiction over selected lands and a dispute concerning rights to such lands is not properly before this Department.

The authority to amend conveyancing documents described at 43 U.S.C. § 1746 (1988), and 43 CFR Subpart 1865, does not include authority to amend a tentative approval which legislatively conveyed selected land to the State of Alaska, unless the State requests the amendment or concurs.

Northwest Alaska Pipeline Co. (On Reconsideration III),
9 OHA 143 (Mar. 24, 1992) 99 I.D. 31

A Native allotment application pending before the Department on Dec. 18, 1971, was not legislatively approved under sec. 905(a)(1) of ANILCA where it describes land which was validly selected by the State of Alaska pursuant to the Alaska Statehood Act on or before Dec. 18, 1971. Instead, the application must be adjudicated pursuant to the requirements of the Native Allotment Act.

Heirs of George Titus, 124 IBLA 1 (Aug. 13, 1992)

The Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), was not repealed by the Alaska Statehood Act, 72 Stat. 339.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)
99 I.D. 219

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

GENERALLY

Under subsec. 906(c)(1) of ANILCA, 43 U.S.C. § 1635(c)(1) (1988), when land has been tentatively approved for transfer to the State of Alaska, legal title has been conveyed and the Department no longer possesses jurisdiction over the land and has no authority to affect title to it.

Eddie S. Beroldo, Robert L. Miller, Jo Ann Miller,
123 IBLA 156 (May 28, 1992)

DUTY OF DEPARTMENT OF THE INTERIOR TO NATIVE ALLOTMENT APPLICANTS

Where a Native allotment applicant has filed a Native allotment application prior to Dec. 18, 1971, and BLM rejected the application in 1968 without affording him an opportunity for a hearing, the rejection decision is not final and the application may be reinstated. Where the application is reinstated, it is properly deemed to be "pending" before the Department on Dec. 18, 1971, within the meaning of sec. 905(a) of ANILCA.

Heirs of George Titus, 124 IBLA 1 (Aug. 13, 1992)

NATIVE ALLOTMENTS

A hearing is not required where rejection of a Native allotment application is made, not in reliance on a disputed question of fact, but as a matter of law.

Heirs of a Native allotment applicant may not, under sec. 905(c) of ANILCA, 43 U.S.C. § 1634(c) (1988), amend the land description in their decedent's allotment

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT--Continued

NATIVE ALLOTMENTS--Continued

application to encompass land in addition to that originally described.

Heirs of Edward Peter, 122 IBLA 109 (Jan. 14, 1992)

When BLM changes the location of a Native allotment claim from its originally intended location during the course of the survey of the claim boundaries to compensate for the loss of a portion of the original claim by erosion, and confirms the legislative approval of the claim in its new location, the Board will set aside the BLM decision and remand the case for resurvey and reconfirmation of the legislative approval of the claim in its original location.

Hermann T. Kroener, 124 IBLA 57 (Aug. 27, 1992)

Sec. 905(a)(1) of ANILCA, 43 U.S.C. § 1634(a)(1) (1988), provided for legislative approval, subject to valid existing rights, of all Alaska Native allotment applications, with certain caveats, one of which was that the section applied only to applications which described land that was unreserved on Dec. 13, 1968. Where land described in a Native allotment application was reserved on Dec. 13, 1968, legislative approval does not apply.

Where the Government contests a Native allotment application, the Native is required to make satisfactory proof, by a preponderance of the evidence, of substantially continuous use and occupancy of the claimed land for a minimum of 5 years. Such use and occupancy contemplates substantial actual possession and use of the land, at least potentially exclusive of others.

Where the evidence presented at a hearing on a Government contest of a Native allotment application in support of the Native's position that he utilized the claimed lands for fishing and hunting in accordance with the customs of the Natives of the area fails to show

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT--Continued

NATIVE ALLOTMENTS--Continued

substantial actual possession and use of the claimed land, the application is properly rejected.

Even if the evidence presented at a hearing on a Government contest of a Native allotment application could be considered as establishing substantial actual possession and use of the available claimed lands, the application will be rejected where the evidence shows that the Native's use of the land was not potentially exclusive of others because he was one of many Natives who utilized the claimed lands for subsistence activities during the period of claimed use and occupancy and there was not evidence that the applicant had recognized authority over the land during that period.

United States v. Zack Rastopsoff (Deceased), Ayakulik, Inc. (Intervenor/Appellant), 124 IBLA 294 (Nov. 4, 1992)

A Native allotment application deemed pending before the Department on Dec. 18, 1971, because it was rejected in 1927 without affording the applicant's heirs an opportunity for a hearing on a disputed question of fact underlying the rejection was not legislatively approved by sec. 905(a) of ANILCA but instead must be adjudicated pursuant to the Act of May 17, 1906 as amended, because the land was validly selected by the State before Dec. 18, 1971, and was not withdrawn pursuant to sec. 11(a)(1)(A) of ANCSA.

Ellen Frank, 124 IBLA 349 (Dec. 2, 1992)

STATE SELECTIONS

Pursuant to sec. 906(c) of ANILCA, 43 U.S.C. § 1635(c) (1988), all right, title, and interest of the United States in and to selected lands is deemed to have vested in the State of Alaska as of the date of tentative approval. Subsequent to such a tentative approval,

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT--Continued

STATE SELECTIONS--Continued

the Secretary of the Interior no longer retains jurisdiction over selected lands and a dispute concerning rights to such lands is not properly before this Department.

The authority to amend conveyancing documents described at 43 U.S.C. § 1746 (1988), and 43 CFR Subpart 1865, does not include authority to amend a tentative approval which legislatively conveyed selected land to the State of Alaska, unless the State requests the amendment or concurs.

Northwest Alaska Pipeline Co. (On Reconsideration III),
9 OHA 143 (Mar. 24, 1992) 99 I.D. 31

A Native allotment application pending before the Department on Dec. 18, 1971, was not legislatively approved under sec. 905(a)(1) of ANILCA where it describes land which was validly selected by the State of Alaska pursuant to the Alaska Statehood Act on or before Dec. 18, 1971. Instead, the application must be adjudicated pursuant to the requirements of the Native Allotment Act.

Heirs of George Titus, 124 IBLA 1 (Aug. 13, 1992)

VALID EXISTING RIGHTS

A Native allotment application pending before the Department on Dec. 18, 1971, was not legislatively approved under sec. 905(a)(1) of ANILCA where it describes land which was validly selected by the State of Alaska pursuant to the Alaska Statehood Act on or before Dec. 18, 1971. Instead, the application must be adjudicated pursuant to the requirements of the Native Allotment Act.

Heirs of George Titus, 124 IBLA 1 (Aug. 13, 1992)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

CONVEYANCES

Native_Groups

A Native group locality is the area where houses and other structures have been constructed, amenities are present, and daily life takes place. The term refers to not only the land on which group members live but also land in the same area on which others reside. It must encompass the greater area in which other residents live in relative proximity, as compared with the population density of lands beyond the area so designated.

BIA improperly determines a Native group locality when it identifies the locality as the smallest legally describable area which includes the member's residences and other improvements.

The fact that land is withdrawn and may be unavailable for conveyance to a Native group is unrelated to the factual determination of the group's locality.

Absent evidence that anyone lived in an area on or about Apr. 1, 1970, it cannot be part of the area in which residents lived in relative proximity for the purpose of determining a Native group's locality.

A member of a Native group must actually reside in the group's locality on Apr. 1, 1970, to be counted as a resident. The exception provided in 43 CFR 2653.6(a)(4) for children "who are temporarily elsewhere for purposes of education" does not require that a child who is attending school be under a particular age, but that the child be the son or daughter of someone residing in and maintaining a home within the locality so that the child may be counted as a member of the parent's household.

Non-Natives are not eligible for enrollment in a Native group and may not be counted as members of a group for purposes of determining whether group members

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Native Groups--Continued

constitute a majority of the residents of the group's locality.

Minchumina Homeowners Ass'n et al., State of Alaska (Intervenor) v. Minchumina Natives, Inc. & The Bureau of Indian Affairs, 122 IBLA 375 (Apr. 2, 1992)

DEFINITIONS

Generally

A Native group locality is the area where houses and other structures have been constructed, amenities are present, and daily life takes place. The term refers to not only the land on which group members live but also land in the same area on which others reside. It must encompass the greater area in which other residents live in relative proximity, as compared with the population density of lands beyond the area so designated.

BIA improperly determines a Native group locality when it identifies the locality as the smallest legally describable area which includes the member's residences and other improvements.

Non-Natives are not eligible for enrollment in a Native group and may not be counted as members of a group for purposes of determining whether group members constitute a majority of the residents of the group's locality.

Minchumina Homeowners Ass'n et al., State of Alaska (Intervenor) v. Minchumina Natives, Inc. & The Bureau of Indian Affairs, 122 IBLA 375 (Apr. 2, 1992)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NATIVE LAND SELECTIONS

Village Selections

The Secretary has determined that lands involved in powersites were withdrawn by sec. 11(a)(1) of ANSCA, 43 U.S.C. § 1610(a)(1) (1988), and are selectable by Native corporations without the reservation provided under sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1988). This determination applies to lands within previously opened powersites and to land remaining in powersite withdrawals when ANCSA was enacted.

Alaska Power Administration (On Reconsideration),
123 IBLA 109 (May 18, 1992)

WITHDRAWALS AND RESERVATIONS

Generally

The fact that land is withdrawn and may be unavailable for conveyance to a Native group is unrelated to the factual determination of the group's locality.

Minchumina Homeowners Ass'n et al., State of Alaska
(Intervenor) v. Minchumina Natives, Inc. & The Bureau
of Indian Affairs, 122 IBLA 375 (Apr. 2, 1992)

AMERICAN INDIAN RELIGIOUS FREEDOM ACT

Where the Montana State Historic Preservation Office is aware that an area may possess traditional cultural values, owing to the presence of Native American fasting and vision questing sites there, but nevertheless concludes that no properties eligible for inclusion on the National Register of Historic Places were identified in the area, BLM is not required to

AMERICAN INDIAN RELIGIOUS FREEDOM ACT--Continued

comply with sec. 106 of the National Historic Preservation Act. Rather, it is adequate for BLM to address effects of gold mining on cultural values through its compliance with the American Indian Religious Freedom Act. BLM complies with the latter Act where it actively solicits the opinions of Native Americans, both individually and in tribal groups, and considers reasonable mitigating measures.

Red Thunder, Inc., et al., 124 IBLA 267 (Nov. 3, 1992)

APPEALS

(See also Administrative Procedure, Contracts, Grazing Permits & Licenses, Indian Probate, Indians, Rules of Practice, Torts, Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970)

GENERALLY

In order to establish standing to appeal under 43 CFR 4.410, an individual or organization must show that he or she is a party to a case and that a legally cognizable interest has been adversely affected by the appealed decision.

Where, in the course of analysis and adjudication, a proposal is changed so much that those potentially adversely affected do not have fair notice of its contents, the decision of the ALJ on the proposal will be set aside and the matter remanded so that BLM may issue a new proposed decision based on analysis of the redefined proposal.

Glenn Grenke v. Bureau of Land Management, 122 IBLA 123 (Jan. 24, 1992)

APPEALS--Continued

GENERALLY--Continued

The Board of Indian Appeals is not required to consider issues and arguments that are raised for the first time on appeal.

All Materials of Montana, Inc. v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 202 (Feb. 27, 1992)

Joint Board of Control for the Flathead, Mission, & Jocko Irrigation Districts v. Acting Portland Area Director, Bureau of Indian Appeals, 22 IBIA 22 (Apr. 13, 1992)

A ROD and FONSI issued by a BLM Area Manager, which is based on an environmental record of review or an EA prepared in response to the filing of an APD on an oil and gas well under 43 CFR 3162.3-1, is first subject to administrative review by a BLM State Director in accordance with 43 CFR 3165.3(b). An appeal to this Board of such a decision that has not been the subject of State Director review will be dismissed and the case remanded for referral to the appropriate State Director.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 283 (Mar. 5, 1992)

Unless otherwise specified, a decision of the Board of Indian Appeals remanding a matter to an official of the BIA restores that official's full authority to consider the matter.

Stone Trucking v. Portland Area Director, Bureau of Indian Affairs, 22 IBIA 52 (May 5, 1992)

APPEALS--Continued

GENERALLY--Continued

An appeal from an order establishing a reclamation bond for a mining operation becomes moot if, during appeal, the plan expires or is modified.

Jim D. Wills, Reggie N. Wills, 123 IBLA 74 (May 11, 1992)

The Board of Indian Appeals lacks jurisdiction to review decisions rendered by the Assistant Secretary--Indian Affairs except when those decisions are specifically referred to it by the Secretary or the Assistant Secretary, or when a right of review is established in regulations.

State of South Dakota & Town of Oacoma v. Aberdeen Area Director, Bureau of Indian Affairs, 22 IBIA 126 (June 12, 1992)

A notice of appeal from a decision of a BIA official that is not timely filed will be dismissed.

Perry Murdock v. Acting Phoenix Area Director, Bureau of Indian Affairs, 22 IBIA 130 (June 18, 1992)

A decision approving an application for permit to drill an oil and gas well under 43 CFR 3162.3-1 is first subject to administrative review by the appropriate BLM State Director in accordance with 43 CFR 3165.3(b). Where an appeal to this Board from such a decision has not been the subject of State Director review, it will be dismissed.

Wyoming Wildlife Federation, 123 IBLA 392 (Aug. 7, 1992)

APPEALS--Continued

GENERALLY--Continued

When BIA believes that, because of a decision regarding a lease of trust or restricted property, immediate action is necessary to protect trust resources or to mitigate damages that might accrue against the lessee of that property, the best practice would be for the official to whom an appeal is taken, or to whom an appeal could be taken, to place the decision into immediate effect pursuant to 25 CFR 2.6(a).

Doyle French v. Aberdeen Area Office, Bureau of Indian Affairs, 22 IBIA 211 (Aug. 11, 1992)

Where an appellant makes no colorable allegation of adverse effect, but solely alleges injury to environmental informational interests (deprivation of information guaranteed by a Federal statute), it has not established that it was adversely affected within the meaning of 43 CFR 4.410(a), and its appeal is properly dismissed for lack of standing. A mere general interest in a problem, absent colorable allegations of adverse effect, is insufficient to confer standing.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83 (Sept. 15, 1992)

An appeal will not be dismissed as untimely if the record transmitted with the appeal fails to establish that the decision from which the appeal is taken was served upon appellant in accordance with 43 CFR 4.401(c) more than 30 days prior to the filing of the notice of appeal or that appellant had actual notice of the decision for more than 30 days before notice of appeal was filed.

APPEALS--Continued

GENERALLY--Continued

Facsimile transmission of a document does not comply with the service requirements of 43 CFR 4.401(c).

Animal Protection Institute of America, 124 IBLA 231 (Oct. 28, 1992)

JURISDICTION

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

Anadarko Petroleum Corp., 122 IBLA 141 (Feb. 3, 1992)

In deciding a motion to dismiss, the Board will consider the uncontroverted facts alleged by the appellant to be correct and will construe its allegations favorably to it, but the appellant is required to establish jurisdiction. If the appellant has made a prima facie showing that jurisdiction exists, however, the Government must present some evidence to refute that showing. An unsubstantiated allegation will not suffice.

When the certification requirements of the Contract Disputes Act are met, the Board has jurisdiction to entertain an appeal from a contracting officer's decision denying a claim brought and certified on behalf of a dissolved joint venture, and the appeal may be pursued in the name of the joint venture.

The Board found that a corporation properly could be substituted as the appellant because it was the real party in interest in the appeal. The substitution did not violate the anti-assignment statutes, because they did not apply. The Board based its conclusion upon the facts that the appeal originally was filed correctly on behalf of the joint venture contracting entity; 3 months

APPEALS--Continued

JURISDICTION--Continued

before the completion of the 2-1/2-year contract term the venture dissolved, but the corporate member of the venture, which was a contract signatory and the venture's managing party for the contract, remained intact, continued to perform, and attended to the completion of the contract work; before the appeal was filed, all of the venture's interests and obligations were merged into the corporation; and there was no prejudice to the Government.

The Board found that the corporate member of a joint venture contracting entity had the authority to certify a claim on behalf of the joint venture and, in any event, was the equivalent of the "general partner" of the venture with overall responsibility for the conduct of its affairs. The latter factor alone qualified the corporation under the contract's Disputes clause to certify the claim. The corporate president, in turn, clearly was authorized to sign for the corporation. Accordingly, his signature bound the joint venture. He also had implied authority to bind the joint venture because he signed the contract on behalf of both of its members. The certification otherwise met all of the requirements of the Disputes clause and the Board had jurisdiction to entertain the appeal.

Appeal of Ball, Ball, & Brosamer, Inc., IBCA-2103-N
(Feb. 5, 1992) 99 I.D. 1

A ROD and FONSI issued by a BLM Area Manager, which is based on an environmental record of review or an EA prepared in response to the filing of an APD on oil and gas well under 43 CFR 3162.3-1, is first subject to administrative review by a BLM State Director in accordance with 43 CFR 3165.3(b). An appeal to this Board of such a decision that has not been the subject of State Director review will be dismissed and the case remanded for referral to the appropriate State Director.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 283 (Mar. 5, 1992)

APPEALS--Continued

JURISDICTION--Continued

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

Benson-Montin-Greer Drilling Corp., 123 IBLA 341
(July 15, 1992) 99 I.D. 115

A decision approving an application for permit to drill an oil and gas well under 43 CFR 3162.3-1 is first subject to administrative review by the appropriate BLM State Director in accordance with 43 CFR 3165.3(b). Where an appeal to this Board from such a decision has not been the subject of State Director review, it will be dismissed.

Wyoming Wildlife Federation, 123 IBLA 392 (Aug. 7, 1992)

Once an appeal is filed with the Board of Indian Appeals from a decision issued by a BIA official, the Bureau loses jurisdiction over the matter except to participate in the appeal as a party.

Cherokee Nation of Oklahoma, Chickasaw Nation, & Choctaw Nation of Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 240 (Aug. 24, 1992)

Pursuant to 43 CFR 4.1282(a), notice of appeal is filed with the office of the OSM official whose decision is appealed and a copy is at the same time filed with the Board of Land Appeals. Nonetheless, 43 CFR 4.1107(c) requires that notice of appeal need only be filed with the Board. This apparent conflict between

APPEALS--Continued

JURISDICTION--Continued

rules governing notices of appeal from OSM decisions is resolved in favor of the appellant who files only with the Board.

An appeal from an OSM decision mailed to this Board within 30 days after issuance of the decision at issue is timely filed pursuant to 43 CFR 4.1107(g).

Marion A. Taylor, 124 IBLA 80 (Sept. 14, 1992)

A decision that is approved by the Secretary of the Interior is not subject to review by the Board of Land Appeals.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83 (Sept. 15, 1992)

APPLICATIONS AND ENTRIES

FILING

A Government contest of a Native allotment application is appropriate when the application bears date-stamps well beyond the Dec. 18, 1971, filing deadline and the applicant's evidence of timeliness consists solely of a two-page BIA form letter, page 1 of which acknowledges receipt of an unspecified Native allotment application and page 2 of which consists only of the applicant's name, address, and a date within the deadline.

State of Alaska (Mabel S. Brown), 123 IBLA 233 (June 9, 1992)

APPLICATIONS AND ENTRIES--Continued

VESTED RIGHTS

A mineral entry final certificate is prepared by BLM for a mining claim after it has determined on the basis of the documents submitted that the claim is apparently valid in that: the land was available at the time of location; acts necessary to keep it in force including annual assessment work have been done; no adverse claim exists; and the applicant has paid the purchase price. However, a mineral examination to establish the discovery of a locatable valuable mineral deposit on the claim is still required to support a patent and, as long as title remains in the United States, mining activities are properly regulated pursuant to relevant statutes and regulations to protect the surface resources.

Internat'l Silica Corp., 124 IBLA 155 (Sept. 30, 1992)

APPRAISALS

Absent a demonstration that BLM's method for appraising the value of the linear and site components of a right-of-way granted for a hydroelectric power facility is erroneous or the rental is clearly excessive, a BLM decision adjusting the rental is properly affirmed.

Bear Creek Hydro, 122 IBLA 200 (Feb. 10, 1992)

BLM's appraisal of the values of land involved in a proposed exchange under sec. 206 of FLPMA, 43 U.S.C. § 1716 (1988), as amended, will not be overturned when an independent appraisal does not establish its methodology or results were in error.

W. J. & Betty Lo Wells, 122 IBLA 250 (Feb. 28, 1992)

APPRAISALS--Continued

An appraisal of a right-of-way will not be set aside unless BLM has erred in applying the proper criteria to calculate the fair market rental value or the appellant shows that the resulting charges are excessive. Absent error in the appraisal methods utilized, an appellant is normally required to submit another appraisal in order to present sufficiently convincing evidence that the rental charges are excessive.

KPVI Channel 6, 122 IBLA 263 (Mar. 3, 1992)

An appraisal of the fair market rental value of a reservoir right-of-way will be upheld on appeal where no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

A decision initially advising the holder of a right-of-way of the fair market rental value of the grant and billing that amount more than 6 years after issuance of the right-of-way may be set aside and remanded for consideration of whether in the public interest the rental charge should be reduced on the basis of undue hardship to the holder under the regulation at 43 CFR 2803.1-2(b)(2)(iv) where the reservoir authorized by the right-of-way was never constructed.

V. Irene Wallace, 122 IBLA 349 (Mar. 12, 1992)

A rental rate adjustment for a right-of-way for a hydroelectric power plant under 43 CFR 2803.1-2 will be set aside and remanded so that the BLM Manual may apply policies and procedures that are being developed for determining rentals for such rights-of-way.

Bear Creek Hydro (On Reconsideration), 124 IBLA 225 (Oct. 27, 1992)

APPRAISALS--Continued

BLM properly requires the holder of a communications site right-of-way to pay rental charges, in addition to those originally estimated at the time of issuance of the right-of-way grant, based upon an appraisal of the fair market rental value of the right-of-way.

Voice Ministries of Farmington, Inc., 124 IBLA 358
(Dec. 4, 1992)

The role of the Board of Indian Appeals in reviewing a BIA determination of fair rental value is to determine whether the decision is reasonable, that is, whether it is supported by law and substantial evidence.

An appellant who challenges a BIA rental adjustment for a lease of Indian land bears the burden of proving that the adjustment is unreasonable.

A determination of fair annual rental for a lease of Indian land should be made in accordance with generally accepted appraisal principles.

John Strain v. Portland Area Director, Bureau of Indian Affairs et al., 23 IBIA 114 (Dec. 18, 1992)

BANKRUPTCY CODE

AUTOMATIC STAY

An oil and gas lease in its extended term by reason of production which embraces a well capable of producing oil or gas in paying quantities expires by operation of law when production ceases and, thereafter, the lessee fails to produce the well upon 60 days' notice to place the well in production. Termination of the lease in such circumstances occurs by operation of law and does not involve any judicial or administrative proceeding. Accordingly, the termination of the lease does not involve an action or proceeding against the debtor or an act to obtain property of the debtor which would be

BANKRUPTCY CODE--Continued

AUTOMATIC STAY--Continued

barred by the automatic stay provided by the Bankruptcy Code, 11 U.S.C. § 362(a) (1988), upon the filing of a petition in bankruptcy.

Great Western Petroleum & Refining Co., 124 IBLA 16
(Aug. 19, 1992)

The automatic stay of the Bankruptcy Code invoked upon the filing of a petition in bankruptcy applies to the commencement or continuation of administrative or judicial proceedings against the debtor or the debtor's assets. As a general rule, the stay does not bar proceedings against the debtor or the debtor's assets. As a general rule, the stay does not bar proceedings against a guarantor or surety on a coal lease bond securing the debtor's obligations under the lease. Hence, a motion on reconsideration to vacate the decision of the Board adjudicating the royalty due on a coal lease on the ground that the lessee came within the jurisdiction of the bankruptcy court prior to issuance of the Board's decision is properly denied where the decision is being relied upon to support a claim against the third party surety and not against the debtor/lessee.

Lone Star Steel Co. (On Reconsideration), 124 IBLA 144
(Sept. 30, 1992)

CONFIRMATION OF PLAN

Confirmation by the bankruptcy court of a plan of reorganization under Chapter 11 of the Bankruptcy Code is binding on both the debtor and the creditors. Although BLM has the authority by regulation to increase the amount of bond coverage required of an oil and gas operator, an order of the bankruptcy court confirming the plan of reorganization of a Federal oil and gas lessee which expressly bars an increase in bond coverage as a condition of production is binding on the

BANKRUPTCY CODE--Continued

CONFIRMATION OF PLAN--Continued

Department in the absence of modification thereof. A finding that an oil and gas lease in its extended term by reason of production terminated automatically for failure to produce lease wells within 60 days of notice to do so will be remanded where production was conditioned upon increased bond coverage expressly barred by order of the bankruptcy court.

Great Western Petroleum & Refining Co., 124 IBLA 16
(Aug. 19, 1992)

BOARD OF INDIAN APPEALS

GENERALLY

The Board of Indian Appeals will not order an evidentiary hearing under 43 CFR 4.337(a) where there is no need for further inquiry to resolve a genuine issue of material fact. The party requesting that the Board order an evidentiary hearing must affirmatively show the existence of a controversy concerning a genuine issue of material fact, the resolution of which is necessary for a decision in the appeal.

All Materials of Montana, Inc. v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 202 (Feb. 27, 1992)

BOARD OF INDIAN APPEALS--Continued

GENERALLY--Continued

The Board of Indian Appeals does not have authority to declare an act of Congress unconstitutional.

Estate of Guadalupe Almanza Conger, 21 IBIA 244
(Mar. 17, 1992)

The Board of Indian Appeals undertakes to interpret tribal law only where there is a clear necessity for it to do so. It therefore does not consider moot issues where, in order to render a decision on the merits, it would be required to interpret tribal law.

Parmenton Decorah et al. v. Minneapolis Area Director, Bureau of Indian Affairs, 22 IBIA 98 (June 10, 1992)

The Board of Indian Appeals will consider the merits of an arguably moot appeal when the matter concerns a potentially recurring question raised by a short-term order capable of repetition, yet evading review.

Cherokee Nation of Oklahoma, Chickasaw Nation, & Choctaw Nation of Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 240 (Aug. 24, 1992)

Under Board of Indian Appeals procedures, an appellant is not required to file an opening brief and may choose to rely on materials already in the record. However, an appellant who waives his opportunity to file an opening brief is not entitled to present his case in chief in a reply brief filed after the answer briefs of opposing parties have been filed.

Tiger Outdoor Advertising, Inc. v. Eastern Area Director, Bureau of Indian Affairs, 22 IBIA 280 (Sept. 9, 1992)

BOARD OF INDIAN APPEALS--Continued

GENERALLY--Continued

An organization need not be incorporated in order to have standing to appeal under 25 CFR Part 2.

An intervenor in an appeal before the Board of Indian Appeals is normally limited to the issues raised by the appellant.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

The role of the Board of Indian Appeals in reviewing a BIA determination of fair rental value is to determine whether the decision is reasonable, that is, whether it is supported by law and substantial evidence.

The Board of Indian Appeals normally will not consider arguments raised for the first time in an appellant's reply brief.

John Strain v. Portland Area Director, Bureau of Indian Affairs et al., 23 IBIA 114 (Dec. 18, 1992)

JURISDICTION

Decisions concerning whether or not to grant a lease of trust or restricted land are committed to the discretion of the BIA. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

Darrell Rathkamp v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 144 (Jan. 9, 1992)

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

The Board of Indian Appeals does not have authority to declare a duly promulgated Departmental regulation invalid.

Diedre Wilson v. Acting Portland Area Director, Bureau of Indian Affairs, 21 IBIA 188 (Feb. 14, 1992)

Decisions concerning whether a tribe's application for a Technical Assistance grant should be funded are committed to the discretion of the BIA. It is not the function of the Board of Indian Appeals, in reviewing such decisions, to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

The Board of Indian Appeals has jurisdiction to review an allegation that raises questions as to whether the BIA followed its own guidelines for a financial assistance program.

Oneida Indian Nation v. Deputy Comm'r of Indian Affairs, 21 IBIA 215 (Feb. 28, 1992)

The approval of requests to acquire land in trust status for an Indian tribe or individual is committed to the discretion of the BIA. It is not the function of the Board of Indian Appeals, in reviewing such decisions, to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

John Ross, Jr. v. Acting Muskogee Area Director, Bureau of Indian Affairs, 21 IBIA 251 (Mar. 18, 1992)

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

The Board of Indian Appeals is not a court of general jurisdiction. It has only that authority which has been delegated to it by the Secretary of the Interior. It has not been delegated authority to determine whether title to land is properly in the United States in trust for an Indian tribe or individual as opposed to being in fee ownership.

Phil Foutz v. Acting Navajo Area Director, Bureau of Indian Affairs, 21 IBIA 273 (Mar. 27, 1992)

The Board of Indian Appeals lacks jurisdiction to review decisions rendered by the Assistant Secretary--Indian Affairs except when those decisions are specifically referred to it by the Secretary or the Assistant Secretary, or when a right of review is established in regulations.

State of South Dakota & Town of Oacoma v. Aberdeen Area Director, Bureau of Indian Affairs, 22 IBIA 126 (June 12, 1992)

The Board of Indian Appeals has no authority to review acts or decisions of the Secretary of the Interior, except as referred to the Board by the Secretary under 43 CFR 4.330(a)(2).

The Board of Indian Appeals does not have authority to declare an act of Congress unconstitutional.

Perry Murdock v. Acting Phoenix Area Director, Bureau of Indian Affairs, 22 IBIA 130 (June 18, 1992)

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

The Board of Indian Appeals does not have authority to declare an act of Congress unconstitutional or a duly promulgated Departmental regulation invalid.

Estates of Evan Gillette, Sr., & Lizzie Gillette/Yellow Bird/Bellanger/Paint/Bedell, aka Elizabeth Burdell,
22 IBIA 133 (June 18, 1992)

Decisions concerning whether a request for a loan guaranty under the Indian Loan Guaranty and Insurance Program should be approved are committed to the discretion of BIA. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, Bureau of Indian Affairs, 22 IBIA 153 (June 26, 1992)

A letter signed by a BIA official in which the official states that he or she cannot make a decision in a pending matter because of insufficient or inadequate information is subject to administrative review under 25 CFR Part 2 and 43 CFR Part 4, Subpart D.

Pinoleville Indian Community Governing Council v. Sacramento Area Director, Bureau of Indian Affairs,
22 IBIA 176 (July 16, 1992)

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

A decision distributing funds among several tribes, for purposes of contracting under the Indian Self-Determination Act, is a decision based on the exercise of discretion. In reviewing such decisions, the Board of Indian Appeals does not substitute its judgment for that of the Bureau but, rather, seeks to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

Ponca Tribe of Oklahoma, Pawnee Tribe of Oklahoma, & Otoe-Missouria Tribe v. Acting Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 199 (Aug. 7, 1992)

Once an appeal is filed with the Board of Indian Appeals from a decision issued by a BIA official, the Bureau loses jurisdiction over the matter except to participate in the appeal as a party.

Cherokee Nation of Oklahoma, Chickasaw Nation, & Choctaw Nation of Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 240 (Aug. 24, 1992)

The Board of Indian Appeals has no authority to declare a Federal statute violative of the United States Constitution or in conflict with a state constitution.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

BOARD OF LAND APPEALS

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

Anadarko Petroleum Corp., 122 IBLA 141 (Feb. 3, 1992)

A ROD and FONSI issued by a BLM Area Manager, which is based on an environmental record of review or an EA prepared in response to the filing of an APD on an oil and gas well under 43 CFR 3162.3-1, is first subject to administrative review by a BLM State Director in accordance with 43 CFR 3165.3(b). An appeal to this Board of such a decision that has not been the subject of State Director review will be dismissed and the case remanded for referral to the appropriate State Director.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 283 (Mar. 5, 1992)

The Board does not make initial adjudication of the existence of valid existing rights to mine that has not first been submitted to and decided by OSM, the agency with jurisdiction of the subject matter involved, nor does the Board render advisory opinions.

Gabriel Energy Corp. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 316 (Mar. 11, 1992)

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

Benson-Montin-Greer Drilling Corp., 123 IBLA 341 (July 15, 1992) 99 I.D. 115

BOARD OF LAND APPEALS--Continued

A decision approving an application for permit to drill an oil and gas well under 43 CFR 3162.3-1 is first subject to administrative review by the appropriate BLM State Director in accordance with 43 CFR 3165.3(b). Where an appeal to this Board from such a decision has not been the subject of State Director review, it will be dismissed.

Wyoming Wildlife Federation, 123 IBLA 392 (Aug. 7, 1992)

Pursuant to 43 CFR 4.1282(a), notice of appeal is filed with the office of the OSM official whose decision is appealed and a copy is at the same time filed with the Board of Land Appeals. Nonetheless, 43 CFR 4.1107(c) requires that notice of appeal need only be filed with the Board. This apparent conflict between rules governing notices of appeal from OSM decisions is resolved in favor of the appellant who files only with the Board.

Marion A. Taylor, 124 IBLA 80 (Sept. 14, 1992)

A decision that is approved by the Secretary of the Interior is not subject to review by the Board of Land Appeals.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83 (Sept. 15, 1992)

BUREAU OF INDIAN AFFAIRS
(See also Indian Probate)

GENERALLY

The BIA does not have the authority or responsibility to enforce a tribal court order. That authority and responsibility resides with the tribal court.

Sherry Camel v. Ass't Portland Area Director, Bureau of Indian Affairs, 21 IBIA 179 (Feb. 10, 1992)

In order to correct prior error, an official of the BIA may change an administrative interpretation of a statute as long as the reason for the change is clearly set forth to show that the departure from the prior administrative position is not arbitrary or capricious.

Hopi Indian Tribe v. Director, Office of Trust & Economic Development, Bureau of Indian Affairs, 22 IBIA 10 (Apr. 7, 1992)

In accordance with the Federal policy of fostering tribal self-determination, which counsels respect for the right of tribes to interpret their own governing documents, BIA should avoid interpreting a tribal constitution unless there is a clear necessity for it to do so.

Parmenton Decorah et al. v. Minneapolis Area Director, Bureau of Indian Affairs, 22 IBIA 98 (June 10, 1992)

When an official of BIA has reason to question a tribal decision which requires action by the Bureau, such as the leasing of tribal trust land, he or she should make the question known to the proper tribal

BUREAU OF INDIAN AFFAIRS--Continued

GENERALLY--Continued

official or forum and ask for clarification of the tribal position.

Thor K. Lande v. Acting Billings Area Director, Bureau of Indian Affairs, 22 IBIA 188 (July 22, 1992)

BIA is bound by the terms of leases it has approved, when the leases are not in conflict with governing regulations.

Comanche Housing Authority & Chloveta A. Caudill v. Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 271 (Sept. 9, 1992)

Although the BIA normally would be bound by the terms of a Housing Improvement Program grant agreement it had signed, it may be excused from performance in a case where performance is impossible.

Mildred Hartman v. Anadarko Area Director, Bureau of Indian Affairs, 23 IBIA 122 (Dec. 18, 1992)

ADMINISTRATIVE APPEALS

Generally

An appeal pending before the BIA may be summarily dismissed only when the reasons for the appeal cannot be determined from the appeal documents taken as a whole and only after the appellant has been given an opportunity to amend his/her appeal documents.

When it is necessary to approximate the date on which an answer is due in an appeal pending before the BIA, the Bureau deciding official should not issue a

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Generally--Continued

decision until a reasonable time has passed after the date an answer might be expected.

Peace Pipe, Inc. v. Acting Muskogee Area Director,
Bureau of Indian Affairs, 22 IBLA 1 (Apr. 2, 1992)

A decision signed by an Acting Area Director of BIA has the same status as a decision signed by an Area Director.

Pat Hayes v. Acting Anadarko Area Director, BIA, 22 IBIA
65 (June 3, 1992)

A decision signed by an Acting Area Director of BIA has the same status as a decision signed by the Area Director.

Navajo Precision Built Systems, Inc. v. Acting Navajo
Area Director, Bureau of Indian Affairs, 22 IBIA 153
(June 26, 1992)

A letter signed by a BIA official in which the official states that he or she cannot make a decision in a pending matter because of insufficient or inadequate information is subject to administrative review under 25 CFR Part 2 and 43 CFR Part 4, Subpart D.

Pinoleville Indian Community Governing Council v.
Sacramento Area Director, Bureau of Indian Affairs,
22 IBIA 176 (July 16, 1992)

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Generally--Continued

Once an appeal is filed with the Board of Indian Appeals from a decision issued by a BIA official, the Bureau loses jurisdiction over the matter except to participate in the appeal as a party.

Cherokee Nation of Oklahoma, Chickasaw Nation, & Choctaw Nation of Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 240 (Aug. 24, 1992)

A Federal agency has a responsibility to explain the rationale and factual basis for decisions affecting persons dealing with the agency. Failure to provide such information is a violation of due process.

Quileute Tribe v. Portland Area Director, Bureau of Indian Affairs, 23 IBIA 20 (Oct. 29, 1992)

An organization need not be incorporated in order to have standing to appeal under 25 CFR Part 2.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

In appeals arising under 25 CFR Part 2, interested parties are entitled to respond to an appellant's argument by filing an answer under 25 CFR 2.11. Therefore, a BIA Area Director may not issue a decision in an appeal prior to expiration of the time allowed for answers in sec. 2.11.

Cheyenne River Sioux Tribe v. Aberdeen Area Director, Bureau of Indian Affairs, 23 IBIA 103 (Dec. 14, 1992)

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Generally--Continued

When, in the course of reviewing a matter under appeal, a BIA official becomes aware that an error has been made by a subordinate Bureau official, and the error is still capable of correction, the deciding official has the authority and the responsibility to correct the error, even though the particular matter was not raised as an issue by the appellant.

Mildred Hartman v. Anadarko Area Director, Bureau of Indian Affairs, 23 IBIA 122 (Dec. 18, 1992)

Discretionary Decisions

When a challenge is raised to a discretionary decision issued by a BIA official under 25 CFR Chapter I, the appellant bears the burden of showing that the official did not properly exercise discretion.

John Ross, Jr. v. Acting Muskogee Area Director, Bureau of Indian Affairs, 21 IBIA 251 (Mar. 18, 1992)

When the BIA denies an application for a U.S. Direct Loan, the administrative record and the decision, when read together, must show how the Bureau reached its conclusions.

Charles McCloud v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 21 IBIA 254 (Mar. 18, 1992)

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Discretionary Decisions--Continued

When an official of BIA determines that an application for financial assistance under the Indian Financing Act should be disapproved, the issuance of a preliminary determination to that effect, allowing the applicant an opportunity to respond, could significantly expedite final resolution of the matter by allowing the applicant to address the official's concerns before initiation of the appeal process.

Nockey Construction, Inc. v. Portland Area Director,
Bureau of Indian Affairs, 22 IBIA 38 (May 1, 1992)

Even if a grant application under the Indian Business Development Program is found to be eligible for funding, it is a proper exercise of the discretion granted to the BIA to find that other applications have higher priority under 25 CFR 286.8. Support for this conclusion must, however, appear in the administrative record.

Stone Trucking v. Portland Area Director, Bureau of
Indian Affairs, 22 IBIA 52 (May 5, 1992)

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Filing

Mandatory Time Limit

A notice of appeal from a decision of a BIA official that is not timely filed will be dismissed.

Perry Murdock v. Acting Phoenix Area Director, Bureau of Indian Affairs, 22 IBIA 130 (June 18, 1992)

BUREAU OF LAND MANAGEMENT

(See also Mineral Leasing Act)

A ROD and FONSI issued by a BLM Area Manager, which is based on an environmental record of review or an EA prepared in response to the filing of an APD on an oil and gas well under 43 CFR 3162.3-1, is first subject to administrative review by a BLM State Director in accordance with 43 CFR 3165.3(b). An appeal to this Board of such a decision that has not been the subject of State Director review will be dismissed and the case remanded for referral to the appropriate State Director.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 283 (Mar. 5, 1992)

A decision approving an application for permit to drill an oil and gas well under 43 CFR 3162.3-1 is first subject to administrative review by the appropriate BLM State Director in accordance with 43 CFR 3165.3(b). Where an appeal to this Board from such a decision has not been the subject of State Director review, it will be dismissed.

Wyoming Wildlife Federation, 123 IBLA 392 (Aug. 7, 1992)

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

It is proper for BLM to declare a lode mining claim null and void ab initio if it was located on land segregated from mineral entry by a valid land classification at the time of location.

Mike & Sandra Sprunger, 123 IBLA 330 (July 10, 1992)

COAL LEASES AND PERMITS

(See also Mineral Leasing Act)

GENERALLY

BLM was authorized to hold a coal lease sale in response to an application for coal deposits where the lands applied for were outside coal production regions following decertification of the Powder River Coal Region. A decision by BLM taking action under that authority is properly affirmed in the absence of a convincing showing that BLM abused its discretion.

An EIS need not be prepared if, on the basis of an adequate EA, BLM finds that the proposed action will produce "no significant impact." A FONSI will be affirmed on appeal if the record shows that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable. Appellants bear the burden of proving error; expressing disagreement with BLM's actions is not enough to succeed on appeal. Where the party challenging the FONSI fails to show that it was premised on a clear error of law, a demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the action; and where BLM's EA is an extensive analysis of environmental concerns, the issuance of the FONSI will be affirmed.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83 (Sept. 15, 1992)

COAL LEASES AND PERMITS--Continued

APPLICATIONS

BLM was authorized to hold a coal lease sale in response to an application for coal deposits where the lands applied for were outside coal production regions following decertification of the Powder River Coal Region. A decision by BLM taking action under that authority is properly affirmed in the absence of a convincing showing that BLM abused its discretion.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83 (Sept. 15, 1992)

BONDS

The automatic stay of the Bankruptcy Code invoked upon the filing of a petition in bankruptcy applies to the commencement or continuation of administrative or judicial proceedings against the debtor or the debtor's assets. As a general rule, the stay does not bar proceedings against the debtor or the debtor's assets. As a general rule, the stay does not bar proceedings against a guarantor or surety on a coal lease bond securing the debtor's obligations under the lease. Hence, a motion on reconsideration to vacate the decision of the Board adjudicating the royalty due on a coal lease on the ground that the lessee came within the jurisdiction of the bankruptcy court prior to issuance of the Board's decision is properly denied where the decision is being relied upon to support a claim against the third party surety and not against the debtor/lessee.

Lone Star Steel Co. (On Reconsideration), 124 IBLA 144 (Sept. 30, 1992)

COAL LEASES AND PERMITS--Continued

DILIGENCE

Under sec. 7(a) of the MLA, as amended, any Federal coal lease which is not producing in "commercial quantities" at the end of 10 years shall be terminated. Production of "commercial quantities" (defined as 1 percent of recoverable coal reserves) must be achieved by the end of the "diligent development period," which is 10 years after lease issuance.

Under sec. 7(b) of the MLA, as amended, a Federal coal lease is subject to two requirements: diligent development and continued operation. The requirement for continued operation may be suspended under that section "where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee," that is, by force majeure conditions. The requirement for diligent development, however, may not be suspended by the existence of force majeure conditions under sec. 7(b).

A suspension granted under sec. 39 of the MLA, as amended, "in the interest of conservation" suspends the requirement of sec. 7(a) and (b) of the MLA, as amended, requiring diligent development within 10 years of the date of issuance of the coal lease.

Alfred G. Hoyl, 123 IBLA 169 (June 3, 1992)

99 I.D. 87

LEASES

BLM was authorized to hold a coal lease sale in response to an application for coal deposits where the lands applied for were outside coal production regions following decertification of the Powder River Coal Region. A decision by BLM taking action under that

COAL LEASES AND PERMITS--Continued

LEASES--Continued

authority is properly affirmed in the absence of a convincing showing that BLM abused its discretion.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83 (Sept. 15, 1992)

The 20-year readjustment interval stated in coal leases issued prior to enactment of FCLAA of Aug. 4, 1976, 30 U.S.C. §§ 201, 209 (1988), was converted to a 10-year readjustment interval by that Act. Although a failure to provide timely notice of readjustment at the end of a 20-year period is treated as a Departmental waiver of its right to impose new or additional terms and conditions, this waiver does not extend to the period between readjustments set by the Act, and a lease may be readjusted at the end of the next 10-year period.

Pursuant to 43 CFR 3473.3-2(a)(3) (1989), royalty for coal removed by underground methods will be 8 percent unless the lessee establishes that conditions warrant a lower amount, but in no case shall the lease term provide for less than 5-percent royalty for coal removed by underground operations. Where there is an indication of ongoing underground mining and the existence of plans for further underground mining, the case will be remanded to determine whether conditions warrant a royalty rate less than 8 percent.

Sunnyside Reclamation & Salvage, Inc., 124 IBLA 238 (Oct. 30, 1992)

COAL LEASES AND PERMITS--Continued

READJUSTMENT

The 20-year readjustment interval stated in coal leases issued prior to enactment of FCLAA of Aug. 4, 1976, 30 U.S.C. §§ 201, 209 (1988), was converted to a 10-year readjustment interval by that Act. Although a failure to provide timely notice of readjustment at the end of a 20-year period is treated as a Departmental waiver of its right to impose new or additional terms and conditions, this waiver does not extend to the period between readjustments set by the Act, and a lease may be readjusted at the end of the next 10-year period.

Pursuant to 43 CFR 3473.3-2(a)(3) (1989), royalty for coal removed by underground methods will be 8 percent unless the lessee establishes that conditions warrant a lower amount, but in no case shall the lease term provide for less than 5-percent royalty for coal removed by underground operations. Where there is an indication of ongoing underground mining and the existence of plans for further underground mining, the case will be remanded to determine whether conditions warrant a royalty rate less than 8 percent.

Sunnyside Reclamation & Salvage, Inc., 124 IBLA 238
(Oct. 30, 1992)

RENTALS

A Federal coal lessee's obligation to pay rental may be suspended under sec. 39 of the MLA, as amended, as interpreted by Departmental regulation 43 CFR 3485.2(c), if he submits detailed supporting information, including (among other things) facts indicating whether the mine can be successfully operated under the existing lease terms. A request for suspension that does not comply with that regulation is properly rejected.

Alfred G. Hoyl, 123 IBLA 169 (June 3, 1992)

99 I.D. 87

COAL LEASES AND PERMITS--Continued

ROYALTIES

The applicable regulations for purposes of determining royalty on Federal coal production sold pursuant to an arm's-length coal supply contract during the period 1980-86 provide that gross value shall be the sale or contract unit price times the number of units sold. What constitutes the sale or contract unit price depends on the terms of the contract.

Where separate provisions of an arm's-length coal supply contract provide the sale or contract unit price for separate sources of coal, and the sales price billed the purchaser is merely a sum of all the various contract pricing components, the pricing provision governing Federal coal production is properly utilized to determine the gross value of Federal production for purposes of calculating royalty.

San Juan Coal Co., 123 IBLA 245 (June 15, 1992)

SUSPENSION OF OPERATIONS AND PRODUCTION

Where a mine fire occurs on fee land adjoining a Federal lease, and where the fee land and Federal lease are not part of a logical mining unit, the fire is not a force majeure providing grounds for relief from the terms of the Federal lease. Further, where the lessee fails to prove that the alleged force majeure event was the proximate cause of his nonperformance; that a good faith effort was made to overcome the problem; and that the problem was beyond his reasonable control, he is not entitled to relief.

A Federal coal lease may not be suspended under sec. 7(b) of the MLA, as amended, recognizing force majeure conditions, due to adverse market conditions.

Under sec. 7(b) of the MLA, as amended, a Federal coal lease is subject to two requirements: diligent development and continued operation. The requirement for continued operation may be suspended under that

COAL LEASES AND PERMITS--Continued

SUSPENSION OF OPERATIONS AND PRODUCTION--Continued

section "where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee," that is, by force majeure conditions. The requirement for diligent development, however, may not be suspended by the existence of force majeure conditions under sec. 7(b).

The only relief available under sec. 7(b) of the MLA, as amended, where force majeure conditions exist is from the lease requirement that "continued operation" be maintained. In order to achieve "continued operation," a lessee must, inter alia, achieve the production of not less than commercial quantities of recoverable coal reserves in each of the first 2 continued operation years "following the achievement of diligent development." Where lessees have not commenced operations on a Federal leasehold, they have not achieved either "diligent development" or "continued operation," so that no relief is available to them under the force majeure provision.

A suspension granted under sec. 39 of the MLA, as amended, "in the interest of conservation" suspends the requirement of sec. 7(a) and (b) of the MLA, as amended, requiring diligent development within 10 years of the date of issuance of the coal lease.

Sec. 39 of the MLA, as amended, provides for suspension of a Federal coal lease either (1) as a matter of right where, through some act, omission, or delay by a Federal agency, beneficial enjoyment of a lease has been precluded, such as where delays imposed upon the lessee due to administrative actions addressing environmental concerns have the effect of denying lessee's operator "timely access" to the property; or (2) as a matter of discretion, in the interest of conservation, e.g., to prevent damage to the environment. Where there is no persuasive evidence either of undue delay imposed by administrative actions addressing environmental concerns or of environmental harm, an application for suspension under sec. 39 is properly denied. The fact that a substantial investment of funds was made in three Federal leases does not create any cognizable right to retain the leases indefinitely. To the contrary, in the

COAL LEASES AND PERMITS--Continued

SUSPENSION OF OPERATIONS AND PRODUCTION--Continued

FCLA Act, Congress required timely development of the leases on pain of termination.

A Federal coal lessee's obligation to pay rental may be suspended under sec. 39 of the MLA, as amended, as interpreted by Departmental regulation 43 CFR 3485.2(c), if he submits detailed supporting information, including (among other things) facts indicating whether the mine can be successfully operated under the existing lease terms. A request for suspension that does not comply with that regulation is properly rejected.

Alfred G. Hoyl, 123 IBLA 169 (June 3, 1992)

99 I.D. 87

TERMINATION

Under sec. 7(a) of the MLA, as amended, any Federal coal lease which is not producing in "commercial quantities" at the end of 10 years shall be terminated. Production of "commercial quantities" (defined as 1 percent of recoverable coal reserves) must be achieved by the end of the "diligent development period," which is 10 years after lease issuance.

Under sec. 7(b) of the MLA, as amended, a Federal coal lease is subject to two requirements: diligent development and continued operation. The requirement for continued operation may be suspended under that section "where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee," that is, by force majeure conditions. The requirement for diligent development, however, may not be suspended by the existence of force majeure conditions under sec. 7(b).

A suspension granted under sec. 39 of the MLA, as amended, "in the interest of conservation" suspends the requirement of sec. 7(a) and (b) of the MLA, as amended,

COAL LEASES AND PERMITS--Continued

TERMINATION--Continued

requiring diligent development within 10 years of the date of issuance of the coal lease.

Alfred G. Hoyl, 123 IBLA 169 (June 3, 1992) 99 I.D. 87

COLOR OR CLAIM OF TITLE

GENERALLY

Issuance of patent under the Color of Title Act, as amended, 43 U.S.C. §§ 1068-1068b (1988), is not warranted if the land was restored to tribal ownership prior to when the color-of-title claimant's chain of title was initiated.

Estate of Edna Turney, 123 IBLA 354 (July 20, 1992)

COMMUNICATION SITES

Any use or occupancy of the public lands such as for radio broadcasting which requires a right-of-way or temporary use permit, which use has not been authorized, is prohibited and shall constitute a trespass for which the trespasser is liable for administrative costs, damages, and penalties under the regulations at 43 CFR 2801.3.

An assessment of damages for a willful trespass is properly affirmed where appellant's conduct constituted a voluntary or conscious trespass in that the evidence

COMMUNICATION SITES--Continued

shows appellant knew of the lack of authority to use the public lands for communication site purposes.

High Desert Communications, Inc., 123 IBLA 20 (Apr. 24, 1992)

CONSTITUTIONAL LAW

GENERALLY

The Board of Indian Appeals does not have authority to declare an act of Congress unconstitutional.

Estate of Guadalupe Almanza Conger, 21 IBIA 244 (Mar. 17, 1992)

Perry Murdock v. Acting Phoenix Area Director, Bureau of Indian Affairs, 22 IBIA 130 (June 18, 1992)

The Board of Indian Appeals does not have authority to declare an act of Congress unconstitutional or a duly promulgated Departmental regulation invalid.

Estates of Evan Gillette, Sr., & Lizzie Gillette/Yellow Bird/Bellanger/Paint/Bedell, aka Elizabeth Burdell, 22 IBIA 133 (June 18, 1992)

The Board of Indian Appeals has no authority to declare a Federal statute violative of the United States Constitution or in conflict with a state constitution.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

CONSTITUTIONAL LAW--Continued

DUE PROCESS

Due process does not require that an evidentiary hearing be provided prior to cancellation of a lease of Indian land.

All Materials of Montana, Inc. v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 202 (Feb. 27, 1992)

CONTESTS AND PROTESTS

(See also Administrative Procedure, Rules of Practice)

GENERALLY

A protest is subject to dismissal if it is founded on conclusory allegations and no reason is given for halting the proposed action. A protestant cannot later cure the defect by stating reasons for protest for the first time on appeal to this Board.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

A decision by BLM may be affirmed where the SOR filed in support of appeal fails to point out error in the decision under review but instead merely reiterates arguments addressed to BLM in a protest and where our review finds the BLM decision on the protest is comprehensive and correctly addresses each of the arguments contained in the protest.

Oregon Natural Resources Council, 122 IBLA 65 (Jan. 9, 1992)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Where an application for patent is filed by a non-mineral claimant which embraces public lands within the boundaries of mineral claims located under the mining laws, the rights of the mining claimants must be considered prior to any ultimate disposition of the land. In such a context, a hearing is properly ordered upon notice to the competing nonmineral and mining claimants for the purpose of determining the character of the land claimed.

Anne Lynn Purdy, Heirs of Arthur Purdy, Sr., 122 IBLA 209 (Feb. 12, 1992)

GOVERNMENT CONTESTS

Because exposure of a vein or lode carrying mineral values is a necessary precondition to the validity of a lode claim, a claim where no mineral values were exposed was properly found to be invalid.

Without calculations estimating tonnage of ore on a mining claim there was nothing to demonstrate that the claim might be part of a projected low-grade mining operation, and it was therefore null and void.

Proof that claims were potentially profitable as part of a low-grade mining operation established the existence of a discovery thereon.

Where the low value of silver at hearing indicated that a claim could not be operated at a profit, but there was evidence that at the time the claim was included in a wilderness area 4 years previously a prevailing higher value would have allowed a profitable operation, the issue of the profitability of the claim is properly remanded for consideration of historic

CONTESTS AND PROTESTS--Continued

GOVERNMENT CONTESTS--Continued

silver values as they might affect the question of discovery.

United States v. American Independence Mines & Minerals,
122 IBLA 177 (Feb. 10, 1992)

Where the Government contests a Native allotment application, the Native is required to make satisfactory proof, by a preponderance of the evidence, of substantially continuous use and occupancy of the claimed land for a minimum of 5 years. Such use and occupancy contemplates substantial actual possession and use of the land, at least potentially exclusive of others.

Where the evidence presented at a hearing on a Government contest of a Native allotment application in support of the Native's position that he utilized the claimed lands for fishing and hunting in accordance with the customs of the Natives of the area fails to show substantial actual possession and use of the claimed land, the application is properly rejected.

Even if the evidence presented at a hearing on a Government contest of a Native allotment application could be considered as establishing substantial actual possession and use of the available claimed lands, the application will be rejected where the evidence shows that the Native's use of the land was not potentially exclusive of others because he was one of many Natives who utilized the claimed lands for subsistence activities during the period of claimed use and occupancy and there was not evidence that the applicant had recognized authority over the land during that period.

United States v. Zack Rastopsoff (Deceased), Ayakulik, Inc. (Intervenor/Appellant), 124 IBLA 294 (Nov. 4, 1992)

CONTRACTS

(See also Appeals, Claims Against the United States,
Delegation of Authority, Labor, Rules of Practice)

CONSTRUCTION AND OPERATION

Generally

Failure by the Government to point out defective work during inspections cannot be construed as Government acceptance or approval of material or workmanship.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

Actions of Parties

A contractor's interpretation that it was not required to install an outside enclosure to protect an electrical transfer switch was unreasonable, because this interpretation ignored clear contract drawings that mandated "weatherproof fittings outside" as well as specification provisions that incorporated this requirement based on the National Electric Code.

The Government has a right to expect compliance with contract specifications. Thus, as long as the cost of correcting completed work that does not substantially comply with the specifications is not economically wasteful, the Government is entitled to require repair or replacement. However, where the Government rejects nonconforming work, it has the burden of proving that the contract requirements have not been met.

Failure by the Government to point out defective work during inspections cannot be construed as Government acceptance or approval of material or workmanship.

A contractor is not entitled to an equitable adjustment for the erroneous installation of a junction box by its electrical subcontractor, where the contractor had failed to supply the subcontractor with the contract drawings and specifications it needed to assure

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties--Continued

that the contractor's unapproved shop drawing was accurate.

A contractor is not entitled to an equitable adjustment for the cost of removing an existing 800-amp breaker where it had failed to make an adequate pre-bid site visit to ascertain the difficulty of the work. The condition necessitating removal of the breaker was readily discernible, and it was not reasonable for the contractor to assume, without inquiry, that the Government or another contractor would remove it.

A contractor is entitled to an equitable adjustment for "loss of efficiency" where the Government failed to timely ascertain the suitability of Government-furnished batteries for use under the contract, and the delay hindered the contractor's performance because the batteries remained in the work area and impeded the contractor's other work.

A contractor is not entitled to the excess costs associated with its extensive modifications of single compression lugs in order to assure a proper electrical conduction where the evidence showed that the contractor did not understand the bolt pattern for the unit and did not consult with the unit's onsite manufacturer's representative. Had it done so, it could have purchased the proper lugs and avoided the modifications claimed.

Where a Government inspector observed a contractor installing conduit to an electrical transformer in a manner contrary to both the manufacturer's specific written instructions and the National Electric Code, but nevertheless allowed the contractor to proceed with the installation, such conduct did not constitute "constructive acceptance" by the Government of the defective work. The inspector had promptly notified the contractor of its improper wiring and had thus preserved the Government's right to require correction at the time of final inspection. The inspector's inaction did not relieve the contractor from the contract requirements, nor was the inspector authorized to change any term or

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties--Continued

condition of the specification without the contracting officer's authorization.

A contractor's alleged interpretation of conflicting drawings and specifications was unpersuasive because it did not prove its reliance on that interpretation either in preparing its bid or in performing the work under the contract.

A contractor fails to meet its burden of proof that Government delays precluded it from voluntarily accelerating its performance under the contract where the contractor did not communicate such an intent to the Government, and its performance schedule did not indicate a critical path method by which the accelerated work could be tracked.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

When, pursuant to the Inspection and Acceptance clause, BOR evaluated whether nonconforming sealant could remain in place, allowed repairs, did not direct a new sealant, but declined to set acceptable bubbling in advance of inspection, its actions were not arbitrary or economically wasteful.

In determining that rejected sealant had to be repaired or replaced, BOR did not use improper testing.

BOR did not withhold superior knowledge about problems with the contractor's sealant.

Appeal of Ball, Ball, & Brosamer, IBCA-2103-N (July 27, 1992) 99 I.D. 126

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties--Continued

When it was within a contractor's control to reject or accept a workload beyond a potential maximum, and the contractor did not reject it in accordance with the contract's provisions; when the contractor failed to prove that any action, or nonpayment, by the Government caused the contractor's default; and when its work was replete with errors, and was of poor quality, the contractor failed to carry its burden to prove that its performance failures were excusable as beyond its control and without its fault or negligence.

The fact that contract compliance was more difficult than the contractor had anticipated did not render the contracting officer's default decision arbitrary or capricious, or an abuse of his discretion.

When the Board found no evidence to support the contractor's allegation that BOR acted in bad faith in its administration of the contract, the contractor failed to meet its exceedingly high burden to overcome the presumption that public officials act in good faith.

Appeal of KARPAK Data & Design, IBCA-2944 et al.
(Aug. 14, 1992) 99 I.D. 163

When, despite an adequate accounting system, a contractor did not foresee an overrun in indirect costs prior to completion of its work under its cost-plus-fixed-fee contract with EPA for a wastewater facilities survey, and so was unable to provide advance notice of the overrun under the contract's Limitation of Funds or Limitation of Cost clauses, those clauses did not preclude recovery of the overrun. The contractor's awareness that its fringe benefit rate exceeded the contract's provisional rate did not constitute foreknowledge of the overrun. In fact, it had projected during performance that it would remain on budget. It established that the increase in fringe benefits costs amounted only to about 44 percent of the total contract overrun, and about 55 percent of the overrun in indirect

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties--Continued

costs claimed, which was due in large part to resolution by DCAA, at the end of the contract work, of substantial cost issues in the contractor's favor, and to increased overhead resulting from unexpected conflict in Iran that disrupted its business.

The Board found the EPA was not prejudiced. The contractor reported the overrun within a reasonable time after completion of the work, before the contract's actual completion date. By the apparent time of the overrun, the contract already had been fully funded, so there was not meaningful funding, or work cessation, election for the contracting officer or the contractor, respectively, to make under the contract's fund and cost limitation clauses. Moreover, the Board found no evidence that EPA was displeased with the contractor's work, or would have refrained from funding the overrun, or would have terminated the work, if the contractor had been able to report the overrun earlier. Rather, EPA considered the work, necessary for a biennial report to Congress, to be high priority and subject to a strict completion schedule. There was no question that the overrun, undisputed in amount, consisted of allowable costs under the contract's Allowable Cost, Fixed Fee, and Payment clause, and the contractor was entitled to be paid for it.

Appeal of Dames & Moore, IBCA-2553 (Oct. 7, 1992)
99 I.D. 194

Allowable Costs

Where a contract specification required the contractor to provide the services of a factory engineer to "supervise and check" the contractor's installation of an electrical unit, the contractor was entitled to an equitable adjustment only for additional costs charged by the manufacturer for "repair" of the unit, which was extra work under the contract. The contractor was not

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs--Continued

entitled to labor and materials associated with the installation startup, because it was required to perform such services under terms of the contract.

The Government has the burden of proving the amount of a price reduction for deleted work under a contract. The Government met its burden by establishing the reasonable value of such work, based on the contractor's bid estimates for the work items in question.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

When, despite an adequate accounting system, a contractor did not foresee an overrun in indirect costs prior to completion of its work under its cost-plus-fixed-fee contract with EPA for a wastewater facilities survey, and so was unable to provide advance notice of the overrun under the contract's Limitation of Funds or Limitation of Cost clauses, those clauses did not preclude recovery of the overrun. The contractor's awareness that its fringe benefit rate exceeded the contract's provisional rate did not constitute foreknowledge of the overrun. In fact, it had projected during performance that it would remain on budget. It established that the increase in fringe benefits costs amounted only to about 44 percent of the total contract overrun, and about 55 percent of the overrun in indirect costs claimed, which was due in large part to resolution by DCAA, at the end of the contract work, of substantial cost issues in the contractor's favor, and to increased overhead resulting from unexpected conflict in Iran that disrupted its business.

The Board found the EPA was not prejudiced. The contractor reported the overrun within a reasonable time after completion of the work, before the contract's actual completion date. By the apparent time of the overrun, the contract already had been fully funded, so there was not meaningful funding, or work cessation,

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs--Continued

election for the contacting officer or the contractor, respectively, to make under the contract's fund and cost limitation clauses. Moreover, the Board found no evidence that EPA was displeased with the contractor's work, or would have refrained from funding the overrun, or would have terminated the work, if the contractor had been able to report the overrun earlier. Rather, EPA considered the work, necessary for a biennial report to Congress, to be high priority and subject to a strict completion schedule. There was no question that the overrun, undisputed in amount, consisted of allowable costs under the contract's Allowable Cost, Fixed Fee, and Payment clause, and the contractor was entitled to be paid for it.

Appeal of Dames & Moore, IBCA-2553 (Oct. 7, 1992)
99 I.D. 194

Assignment of Claims

A prime contractor is not entitled to an adjustment in the contract price under the Prompt Payment clause for a delayed payment to its subcontractor, because that clause does not impose an obligation on the Government to pay interest penalties on past due accounts to subcontractors.

The Government has no obligation to ensure that a subcontractor is paid in accordance with the terms of its subcontract where there is no privity of contract between the subcontractor and the Government.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions_(Differing Site_Conditions)

A contractor is not entitled to an equitable adjustment where the extra costs incurred to perform the work were a direct result of its subcontractor's failure to conduct an adequate pre-bid site investigation and where the subcontractor instead relied exclusively on an unapproved field drawing provided by the contractor that failed to depict site conditions correctly.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

Changes and Extras

A contractor is not entitled to an equitable adjustment for the cost of removing an existing 800-amp breaker where it had failed to make an adequate pre-bid site visit to ascertain the difficulty of the work. The condition necessitating removal of the breaker was readily discernible, and it was not reasonable for the contractor to assume, without inquiry, that the Government or another contractor would remove it.

A contractor is entitled to an equitable adjustment for "loss of efficiency" where the Government failed to timely ascertain the suitability of Government-furnished batteries for use under the contract, and the delay hindered the contractor's performance because the batteries remained in the work area and impeded the contractor's other work.

Where a contract specification required the contractor to provide the services of a factory engineer to "supervise and check" the contractor's installation of an electrical unit, the contractor was entitled to an equitable adjustment only for additional costs charged by the manufacturer for "repair" of the unit, which was extra work under the contract. The contractor was not entitled to labor and materials associated with the

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

installation startup, because it was required to perform such services under terms of the contract.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

When the Government incorrectly based a payment deduction upon a portion of its riprap specification which the Board found unreasonable, the contractor was entitled to be recompensed for the improper deduction.

Appeal of White & McNeil Excavating, Inc., IBCA-2448 (July 24, 1992) 99 I.D. 121

When, pursuant to the Inspection and Acceptance clause, BOR evaluated whether nonconforming sealant could remain in place, allowed repairs, did not direct a new sealant, but declined to set acceptable bubbling in advance of inspection, its actions were not arbitrary or economically wasteful.

In determining that rejected sealant had to be repaired or replaced, BOR did not use improper testing.

In failing to prove that its products and their application complied with specifications, appellant did not carry its threshold burden to prove BOR's design specifications defective.

BOR did not withhold superior knowledge about problems with the contractor's sealant.

Appeal of Ball, Ball, & Brosamer, IBCA-2103-N (July 27, 1992) 99 I.D. 126

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract_Clauses

Although a liquidated damages clause contained no specific provision for excusable delay, the Board found that a delay caused by an earthquake was excusable under provisions of the default clause where the length of the period of liquidated damages depended on provisions in the default clause, including its provisions for excusable delay, so that the two clauses could not be interpreted separately.

Appeal of Jelcon, IBCA-2842, -2843 (Apr. 9, 1992)

When, despite an adequate accounting system, a contractor did not foresee an overrun in indirect costs prior to completion of its work under its cost-plus-fixed-fee contract with EPA for a wastewater facilities survey, and so was unable to provide advance notice of the overrun under the contract's Limitation of Funds or Limitation of Cost clauses, those clauses did not preclude recovery of the overrun. The contractor's awareness that its fringe benefit rate exceeded the contract's provisional rate did not constitute foreknowledge of the overrun. In fact, it had projected during performance that it would remain on budget. It established that the increase in fringe benefits costs amounted only to about 44 percent of the total contract overrun, and about 55 percent of the overrun in indirect costs claimed, which was due in large part to resolution by DCAA, at the end of the contract work, of substantial cost issues in the contractor's favor, and to increased overhead resulting from unexpected conflict in Iran that disrupted its business.

The Board found the EPA was not prejudiced. The contractor reported the overrun within a reasonable time after completion of the work, before the contract's actual completion date. By the apparent time of the overrun, the contract already had been fully funded, so there was not meaningful funding, or work cessation, election for the contracting officer or the contractor, respectively, to make under the contract's fund and cost

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract_Clauses--Continued

limitation clauses. Moreover, the Board found no evidence that EPA was displeased with the contractor's work, or would have refrained from funding the overrun, or would have terminated the work, if the contractor had been able to report the overrun earlier. Rather, EPA considered the work, necessary for a biennial report to Congress, to be high priority and subject to a strict completion schedule. There was no question that the overrun, undisputed in amount, consisted of allowable costs under the contract's Allowable Cost, Fixed Fee, and Payment clause, and the contractor was entitled to be paid for it.

Appeal of Dames & Moore, IBCA-2553 (Oct. 7, 1992)
99 I.D. 194

Contractor

A contractor is not entitled to an equitable adjustment for the erroneous installation of a junction box by its electrical subcontractor, where the contractor had failed to supply the subcontractor with the contract drawings and specifications it needed to assure that the contractor's unapproved shop drawing was accurate.

A contractor is not entitled to the excess costs associated with its extensive modifications of single compression lugs in order to assure a proper electrical conduction where the evidence showed that the contractor did not understand the bolt pattern for the unit and did not consult with the unit's onsite manufacturer's representative. Had it done so, it could have purchased the proper lugs and avoided the modifications claimed.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions)

A contractor, who was compensated for differing site conditions requiring removal of unexpected concrete blocks and relocating a drain, was held not to be entitled to an extension of contract time when the differing site condition work was completed more than a month prior to the time the contractor received approval to start the final phase of construction and the differing site conditions were not shown to have any impact on the completion date.

Appeal of Jelcon, IBCA-2842, -2843 (Apr. 9, 1992)

Drawings and Specifications

A contractor is not entitled to an equitable adjustment where the extra costs incurred to perform the work were a direct result of its subcontractor's failure to conduct an adequate pre-bid site investigation and where the subcontractor instead relied exclusively on an unapproved field drawing provided by the contractor that failed to depict site conditions correctly.

Where a construction contractor asserts that a contract was ambiguous with respect to the grounding of a transformer, but failed to make inquiry prior to bidding to clarify the issue, it assumes the risk of any resulting incorrect assumptions relating to the work during performance of the contract.

A contractor's alleged interpretation of conflicting drawings and specifications was unpersuasive because it did not prove its reliance on that interpretation either in preparing its bid or in performing the work under the contract.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

When the Government incorrectly based a payment deduction upon a portion of its riprap specification which the Board found unreasonable, the contractor was entitled to be recompensed for the improper deduction.

Appeal of White & McNeil Excavating, Inc., IBCA-2448
(July 24, 1992) 99 I.D. 121

When canal joint sealant did not cure to a homogeneous compound, it did not meet contract specifications.

In failing to prove that its products and their application complied with specifications, appellant did not carry its threshold burden to prove BOR's design specifications defective.

Appeal of Ball, Ball, & Brosamer, IBCA-2103-N (July 27,
1992) 99 I.D. 126

Duty to Inquire

A contractor is not entitled to an equitable adjustment for the cost of removing an existing 800-amp breaker where it had failed to make an adequate pre-bid site visit to ascertain the difficulty of the work. The condition necessitating removal of the breaker was readily discernible, and it was not reasonable for the contractor to assume, without inquiry, that the Government or another contractor would remove it.

Where a construction contractor asserts that a contract was ambiguous with respect to the grounding of a transformer, but failed to make inquiry prior to bidding to clarify the issue, it assumes the risk of any

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Duty to Inquire--Continued

resulting incorrect assumptions relating to the work during performance of the contract.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

General Rules of Construction

A contractor's interpretation that it was not required to install an outside enclosure to protect an electrical transfer switch was unreasonable, because this interpretation ignored clear contract drawings that mandated "weatherproof fittings outside" as well as specification provisions that incorporated this requirement based on the National Electric Code.

A contractor's alleged interpretation of conflicting drawings and specifications was unpersuasive because it did not prove its reliance on that interpretation either in preparing its bid or in performing the work under the contract.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

The interpretation of a contract requires that the agreement must be read as a whole in order to give proper effect to all provisions. Two potentially conflicting provisions must, if possible, be read so as to give effect to both without reading one or the other out of the agreement. In a contract for construction of a concrete water control structure, a provision requiring repairing and patching on the occurrence of certain conditions must be read as modifying the standard Inspection of Construction clause so that the latter does not mandate removal and replacement of the structure based

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction--Continued

on the occurrence of the conditions covered by the former.

Appeal of Sevcon, Inc., IBCA-2862 (Mar. 9, 1992)

Although a liquidated damages clause contained no specific provision for excusable delay, the Board found that a delay caused by an earthquake was excusable under provisions of the default clause where the length of the period of liquidated damages depended on provisions in the default clause, including its provisions for excusable delay, so that the two clauses could not be interpreted separately.

Appeal of Jelcon, IBCA-2842, -2843 (Apr. 9, 1992)

Intent of Parties

A contractor fails to meet its burden of proof that Government delays precluded it from voluntarily accelerating its performance under the contract where the contractor did not communicate such an intent to the Government, and its performance schedule did not indicate a critical path method by which the accelerated work could be tracked.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Modification of Contracts

Generally

Where a Government inspector observed a contractor installing conduit to an electrical transformer in a manner contrary to both the manufacturer's specific written instructions and the National Electric Code, but nevertheless allowed the contractor to proceed with the installation, such conduct did not constitute "constructive acceptance" by the Government of the defective work. The inspector had promptly notified the contractor of its improper wiring and had thus preserved the Government's right to require correction at the time of final inspection. The inspector's inaction did not relieve the contractor from the contract requirements, nor was the inspector authorized to change any term or condition of the specification without the contracting officer's authorization.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

Notices

Where a Government inspector observed a contractor installing conduit to an electrical transformer in a manner contrary to both the manufacturer's specific written instructions and the National Electric Code, but nevertheless allowed the contractor to proceed with the installation, such conduct did not constitute "constructive acceptance" by the Government of the defective work. The inspector had promptly notified the contractor of its improper wiring and had thus preserved the Government's right to require correction at the time of final inspection. The inspector's inaction did not relieve the contractor from the contract requirements, nor was the inspector authorized to change any term or

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Notices--Continued

condition of the specification without the contracting officer's authorization.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

When, despite an adequate accounting system, a contractor did not foresee an overrun in indirect costs prior to completion of its work under its cost-plus-fixed-fee contract with EPA for a wastewater facilities survey, and so was unable to provide advance notice of the overrun under the contract's Limitation of Funds or Limitation of Cost clauses, those clauses did not preclude recovery of the overrun. The contractor's awareness that its fringe benefit rate exceeded the contract's provisional rate did not constitute foreknowledge of the overrun. In fact, it had projected during performance that it would remain on budget. It established that the increase in fringe benefits costs amounted only to about 44 percent of the total contract overrun, and about 55 percent of the overrun in indirect costs claimed, which was due in large part to resolution by DCAA, at the end of the contract work, of substantial cost issues in the contractor's favor, and to increased overhead resulting from unexpected conflict in Iran that disrupted its business.

The Board found the EPA was not prejudiced. The contractor reported the overrun within a reasonable time after completion of the work, before the contract's actual completion date. By the apparent time of the overrun, the contract already had been fully funded, so there was not meaningful funding, or work cessation, election for the contracting officer or the contractor, respectively, to make under the contract's fund and cost limitation clauses. Moreover, the Board found no evidence that EPA was displeased with the contractor's work, or would have refrained from funding the overrun, or would have terminated the work, if the contractor had been able to report the overrun earlier. Rather, EPA

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Notices--Continued

considered the work, necessary for a biennial report to Congress, to be high priority and subject to a strict completion schedule. There was no question that the overrun, undisputed in amount, consisted of allowable costs under the contract's Allowable Cost, Fixed Fee, and Payment clause, and the contractor was entitled to be paid for it.

Appeal of Dames & Moore, IBCA-2553 (Oct. 7, 1992)
99 I.D. 194

Payments

A prime contractor is not entitled to an adjustment in the contract price under the Prompt Payment clause for a delayed payment to its subcontractor, because that clause does not impose an obligation on the Government to pay interest penalties on past due accounts to subcontractors.

The Government has no obligation to ensure that a subcontractor is paid in accordance with the terms of its subcontract where there is no privity of contract between the subcontractor and the Government.

The Government has the burden of proving the amount of a price reduction for deleted work under a contract. The Government met its burden by establishing the reasonable value of such work, based on the contractor's bid estimates for the work items in question.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Privity of Contract

The Government has no obligation to ensure that a subcontractor is paid in accordance with the terms of its subcontract where there is no privity of contract between the subcontractor and the Government.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

Subcontractors and Suppliers

A contractor is not entitled to an equitable adjustment where the extra costs incurred to perform the work were a direct result of its subcontractor's failure to conduct an adequate pre-bid site investigation and where the subcontractor instead relied exclusively on an unapproved field drawing provided by the contractor that failed to depict site conditions correctly.

The Government has no obligation to insure that a subcontractor is paid in accordance with the terms of its subcontract where there is no privity of contract between the subcontractor and the Government.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

CONTRACT DISPUTES ACT OF 1978

Jurisdiction

In deciding a motion to dismiss, the Board will consider the uncontroverted facts alleged by the appellant to be correct and will construe its allegations favorably to it, but the appellant is required to establish jurisdiction. If the appellant has made a prima facie showing that jurisdiction exists, however,

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

the Government must present some evidence to refute that showing. An unsubstantiated allegation will not suffice.

When the certification requirements of the Contract Disputes Act are met, the Board has jurisdiction to entertain an appeal from a contracting officer's decision denying a claim brought and certified on behalf of a dissolved joint venture, and the appeal may be pursued in the name of the joint venture.

The Board found that a corporation properly could be substituted as the appellant because it was the real party in interest in the appeal. The substitution did not violate the anti-assignment statutes, because they did not apply. The Board based its conclusion upon the facts that the appeal originally was filed correctly on behalf of the joint venture contracting entity; 3 months before the completion of the 2-1/2-year contract term the venture dissolved, but the corporate member of the venture, which was a contract signatory and the venture's managing party for the contract, remained intact, continued to perform, and attended to the completion of the contract work; before the appeal was filed, all of the venture's interests and obligations were merged into the corporation; and there was no prejudice to the Government.

The Board found that the corporate member of a joint venture contracting entity had the authority to certify a claim on behalf of the joint venture and, in any event, was the equivalent of the "general partner" of the venture with overall responsibility for the conduct of its affairs. The latter factor alone qualified the corporation under the contract's Disputes clause to certify the claim. The corporate president, in turn, clearly was authorized to sign for the corporation. Accordingly, his signature bound the joint venture. He also had implied authority to bind the joint venture because he signed the contract on behalf of both of its members. The certification otherwise met all of the

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

requirements of the Disputes clause and the Board had jurisdiction to entertain the appeal.

Appeal of Ball, Ball, & Brosamer, Inc., IBCA-2103-N
(Feb. 5, 1992) 99 I.D. 1

Under the Contract Disputes Act, 41 U.S.C. §§ 605(a) and (b), the Board reviews the contracting officer's decision de novo and his quantum findings are not binding.

Appeal of White & McNeil Excavating, Inc., IBCA-2448
(July 24, 1992) 99 I.D. 121

A contractor's claim certification that the amounts requested accurately reflected the contract price adjustment to which it was entitled, and which otherwise followed the language of the CDA, 41 U.S.C. § 605(c)(1), substantially complied with the statutory requirements.

A claim certification in which the certifier represented that "I" certify that the claim is made in good faith and that the supporting data are accurate and complete to the best of "my" knowledge and belief, and which otherwise followed the language of the CDA, amounted to the corporate contractor's certification, and substantially complied with the statutory requirements.

A corporate Vice President and member of the Board of Directors, who executed and had full responsibility for the bid which became the contract; had full responsibility for the management of the contract project; had full authority to submit claims, without prior approval; was present about 10 percent of his time at the relatively remote desert project site; attended meetings with the contracting officer and all other significant meetings; and was in at least daily communication with

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

his onsite project manager, who reported directly to him, qualified under FAR 33.207(c)(2)(i) to certify the contractor's claims as "[a senior company official in charge at the contractor's plant or location involved."

Appeals of Hardrives, Inc., IBCA-2319 et al. (Dec. 1, 1992) 99 I.D. 242

The Board held that it possessed jurisdiction to decide a dispute involving the funding of an administrative grant issued under the Indian Education Amendments of 1988.

Rock Point Community School Board, IBCA-3008 et al. (Dec. 30, 1992) 99 I.D. 248

In deciding motions to dismiss for lack of jurisdiction, in connection with appellant's claims under its contract with the BOR for canal construction, the Board construed the complaint's allegations favorably to appellant; accepted unchallenged allegations as true; and considered relevant evidence of record.

The Board found that a subcontractor had not withdrawn its claims against appellant arising out of the BOR contract, and the fact that appellant was required to pay the subcontractor in accordance with the subcontract, if the Bureau paid appellant was sufficient to bar the application of the "Severin doctrine," which provides that a prime contractor cannot recover sums from the Government if they pertain only to a subcontractor's claim which the prime is not liable to pay. The Board also found that appellant properly was pursuing claims in its own right, as the entity in privity of contract with the Government.

In finding that appellant's administrative delay claim in connection with the resolution of a design

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

defect involving five concrete structures was based upon the same operative facts included in its original certified claim to the contracting officer under the CDA, and did not constitute a new claim, the Board considered the totality of the relevant correspondence and communications. It also found that the claim satisfied the dispute and "sum certain" requirements of FAR 33.201.

The Board concluded that appellant's increase in its amended complaint of the number of delay days sought, its presentation of its quantum proof on a modified total cost basis, and its inclusion of costs associated with the effect of erroneous contract earthwork elevations upon pipe trenching, previously presented as a separate claim, then withdrawn, did not constitute new claims that had not been submitted to the contracting officer.

While finding that the Government had ample opportunity to audit and review appellant's claims, the Board stressed that an audit was not a jurisdictional prerequisite under the CDA to the Board's consideration of a properly submitted claim.

Appeals of Hardrives, Inc., IBCA-2319 et al. (Dec. 30, 1992) 99 I.D. 249

DISPUTES AND REMEDIES

Generally

A contractor's claim for excess landscaping labor and erosion control costs must be denied when the Government's contemporaneous inspection reports to the contrary are more credible than the unsupported allegations of the contractor.

A contractor is not entitled to an equitable adjustment for excess travel and management expenses where its

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Generally--Continued

estimates of typical costs for air fare, lodging, and subsistence are not adequately supported by documentary evidence.

A contractor is not entitled to the excess costs associated with its extensive modifications of single compression lugs in order to assure a proper electrical conduction where the evidence showed that the contractor did not understand the bolt pattern for the unit and did not consult with the unit's onsite manufacturer's representative. Had it done so, it could have purchased the proper lugs and avoided the modifications claimed.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

Burden of Proof

A contractor's claim for excess landscaping labor and erosion control costs must be denied when the Government's contemporaneous inspection reports to the contrary are more credible than the unsupported allegations of the contractor.

A contractor is not entitled to an equitable adjustment for excess travel and management expenses where its estimates of typical costs for air fare, lodging, and subsistence are not adequately supported by documentary evidence.

The contractor bears the burden of showing a causal relation between alleged Government changes and project delay. A contractor's claim for an equitable adjustment must be denied where contemporaneous evidence does not confirm that the contractor was precluded from completing its work as originally planned.

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden_of Proof--Continued

A contractor fails to meet its burden of proof that Government delays precluded it from voluntarily accelerating its performance under the contract where the contractor did not communicate such an intent to the Government, and its performance schedule did not indicate a critical path method by which the accelerated work could be tracked.

The Government has the burden of proving the amount of a price reduction for deleted work under a contract. The Government met its burden by establishing the reasonable value of such work, based on the contractor's bid estimates for the work items in question.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

When the Government incorrectly based a payment deduction upon a portion of its riprap specification which the Board found unreasonable, the contractor was entitled to be recompensed for the improper deduction.

Appeal of White & McNeil Excavating, Inc., IBCA-2448
(July 24, 1992) 99 I.D. 121

When a contract to provide electrical drawings for BOR's Grand Coulee Dam Project was terminated for default, the Government met its burden to prove the default justified when the contractor stipulated that 62 of the drawings it submitted failed to meet contractual standards and BOR properly rejected them; and the contractor did not deliver any set of drawings, with the minimum 99-percent accuracy required by the contract, within required, or extended, performance periods.

When it was within a contractor's control to reject or accept a workload beyond a potential maximum, and the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

contractor did not reject it in accordance with the contract's provisions; when the contractor failed to prove that any action, or nonpayment, by the Government caused the contractor's default; and when its work was replete with errors, and was of poor quality, the contractor failed to carry its burden to prove that its performance failures were excusable as beyond its control and without its fault or negligence.

The fact that contract compliance was more difficult than the contractor had anticipated did not render the contracting officer's default decision arbitrary or capricious, or an abuse of his discretion.

When the Board found no evidence to support the contractor's allegation that BOR acted in bad faith in its administration of the contract, the contractor failed to meet its exceedingly high burden to overcome the presumption that public officials act in good faith.

Appeal of KARPAK Data & Design, IBCA-2944 at al.
(Aug. 14, 1992) 99 I.D. 163

Damages

Generally

The contractor bears the burden of showing a causal relation between alleged Government changes and project delay. A contractor's claim for an equitable adjustment must be denied where contemporaneous evidence does not confirm that the contractor was precluded from completing its work as originally planned.

A contractor is entitled to an equitable adjustment for "loss of efficiency" where the Government failed to timely ascertain the suitability of Government-furnished batteries for use under the contract, and the delay hindered the contractor's performance because the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Generally--Continued

batteries remained in the work area and impeded the contractor's other work.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

When the Government incorrectly based a payment deduction upon a portion of its riprap specification which the Board found unreasonable, the contractor was entitled to be recompensed for the improper deduction.

Appeal of White & McNeil Excavating, Inc., IBCA-2448
(July 24, 1992) 99 I.D. 121

Equitable Adjustments

The Government has a right to expect compliance with contract specifications. Thus, as long as the cost of correcting completed work that does not substantially comply with the specifications is not economically wasteful, the Government is entitled to require repair or replacement. However, where the Government rejects nonconforming work, it has the burden of proving that the contract requirements have not been met.

Where a contract specification required the contractor to provide the services of a factory engineer to "supervise and check" the contractor's installation of an electrical unit, the contractor was entitled to an equitable adjustment only for additional costs charged by the manufacturer for "repair" of the unit, which was extra work under the contract. The contractor was not entitled to labor and materials associated with the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

installation startup, because it was required to perform such services under terms of the contract.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

Jurisdiction

In deciding a motion to dismiss, the Board will consider the uncontroverted facts alleged by the appellant to be correct and will construe its allegations favorably to it, but the appellant is required to establish jurisdiction. If the appellant has made a prima facie showing that jurisdiction exists, however, the Government must present some evidence to refute that showing. An unsubstantiated allegation will not suffice.

When the certification requirements of the Contract Disputes Act are met, the Board has jurisdiction to entertain an appeal from a contracting officer's decision denying a claim brought and certified on behalf of a dissolved joint venture, and the appeal may be pursued in the name of the joint venture.

The Board found that a corporation properly could be substituted as the appellant because it was the real party in interest in the appeal. The substitution did not violate the anti-assignment statutes, because they did not apply. The Board based its conclusion upon the facts that the appeal originally was filed correctly on behalf of the joint venture contracting entity; 3 months before the completion of the 2-1/2-year contract term the venture dissolved, but the corporate member of the venture, which was a contract signatory and the venture's managing party for the contract, remained intact, continued to perform, and attended to the completion of the contract work; before the appeal was filed, all of the venture's interests and obligations were merged into

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

the corporation; and there was no prejudice to the Government.

The Board found that the corporate member of a joint venture contracting entity had the authority to certify a claim on behalf of the joint venture and, in any event, was the equivalent of the "general partner" of the venture with overall responsibility for the conduct of its affairs. The latter factor alone qualified the corporation under the contract's Disputes clause to certify the claim. The corporate president, in turn, clearly was authorized to sign for the corporation. Accordingly, his signature bound the joint venture. He also had implied authority to bind the joint venture because he signed the contract on behalf of both of its members. The certification otherwise met all of the requirements of the Disputes clause and the Board had jurisdiction to entertain the appeal.

Appeal of Ball, Ball, & Brosamer, Inc., IBCA-2103-N
(Feb. 5, 1992) 99 I.D. 1

The Board held that it possessed jurisdiction to decide a dispute involving the funding of an administrative grant issued under the Indian Education Amendments of 1988.

Rock Point Community School Board, IBCA-3008 et al.
(Dec. 30, 1992) 99 I.D. 248

In deciding motions to dismiss for lack of jurisdiction, in connection with appellant's claims under its contract with the BOR for canal construction, the Board construed the complaint's allegations favorably to

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

appellant; accepted unchallenged allegations as true; and considered relevant evidence of record.

The Board found that a subcontractor had not withdrawn its claims against appellant arising out of the BOR contract, and the fact that appellant was required to pay the subcontractor in accordance with the subcontract, if the Bureau paid appellant was sufficient to bar the application of the "Severin doctrine," which provides that a prime contractor cannot recover sums from the Government if they pertain only to a subcontractor's claim which the prime is not liable to pay. The Board also found that appellant properly was pursuing claims in its own right, as the entity in privity of contract with the Government.

In finding that appellant's administrative delay claim in connection with the resolution of a design defect involving five concrete structures was based upon the same operative facts included in its original certified claim to the contracting officer under the CDA, and did not constitute a new claim, the Board considered the totality of the relevant correspondence and communications. It also found that the claim satisfied the dispute and "sum certain" requirements of FAR 33.201.

The Board concluded that appellant's increase in its amended complaint of the number of delay days sought, its presentation of its quantum proof on a modified total cost basis, and its inclusion of costs associated with the effect of erroneous contract earthwork elevations upon pipe trenching, previously presented as a separate claim, then withdrawn, did not constitute new claims that had not been submitted to the contracting officer.

While finding that the Government had ample opportunity to audit and review appellant's claims, the Board

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

stressed that an audit was not a jurisdictional prerequisite under the CDA to the Board's consideration of a properly submitted claim.

Appeals of Hardrives, Inc., IBCA-2319 et al. (Dec. 30, 1992) 99 I.D. 249

Substantial Evidence

A contractor is not entitled to an equitable adjustment for excess travel and management expenses where its estimates of typical costs for air fare, lodging, and subsistence are not adequately supported by documentary evidence.

Appeals of Cooper Mechanical Contractors & Continental Engineering, IBCA-2744 et al. (Feb. 18, 1992)

Termination for Default

Generally

When a contract to provide electrical drawings for BOR's Grand Coulee Dam Project was terminated for default, the Government met its burden to prove the default justified when the contractor stipulated that 62 of the drawings it submitted failed to meet contractual standards and BOR properly rejected them; and the contractor did not deliver any set of drawings, with the minimum 99-percent accuracy required by the contract, within required, or extended, performance periods.

When it was within a contractor's control to reject or accept a workload beyond a potential maximum, and the contractor did not reject it in accordance with the contract's provisions; when the contractor failed to prove

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

Generally--Continued

that any action, or nonpayment, by the Government caused the contractor's default; and when its work was replete with errors, and was of poor quality, the contractor failed to carry its burden to prove that its performance failures were excusable as beyond its control and without its fault or negligence.

The fact that contract compliance was more difficult than the contractor had anticipated did not render the contracting officer's default decision arbitrary or capricious, or an abuse of his discretion.

When the Board found no evidence to support the contractor's allegation that BOR acted in bad faith in its administration of the contract, the contractor failed to meet its exceedingly high burden to overcome the presumption that public officials act in good faith.

Appeal of KARPAK Data & Design, IBCA-2944 et al.
(Aug. 14, 1992) 99 I.D. 163

INDIAN SELF-DETERMINATION AND EDUCATION
ASSISTANCE ACT

Generally

A decision distributing funds among several tribes, for purposes of contracting under the Indian Self-Determination Act, is a decision based on the exercise of discretion. In reviewing such decisions, the Board of Indian Appeals does not substitute its judgment for that of the Bureau but, rather, seeks to ensure that proper

CONTRACTS--Continued

INDIAN SELF-DETERMINATION AND EDUCATION
ASSISTANCE ACT--Continued

Generally--Continued

consideration was given to all legal prerequisites to the exercise of discretion.

Ponca Tribe of Oklahoma, Pawnee Tribe of Oklahoma, & Otoe-Missouria Tribe v. Acting Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 199 (Aug. 7, 1992)

Under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450f(b)(3) (1988), whenever the Secretary declines to enter into a self-determination contract, he must provide the tribal organization with a hearing on the record. A BLM decision declining a self-determination contract application will be set aside if BLM has not afforded the tribe an opportunity for a hearing, and the case will be assigned to an ALJ to conduct the statutorily mandated hearing. The record of the hearing shall then be forwarded to the Director, BLM, for review and issuance of a decision with appeal rights to the Ass't Secretary, Land and Minerals Management.

Absentee Shawnee Tribe of Oklahoma, 124 IBLA 259 (Nov. 3, 1992)

PERFORMANCE OR DEFAULT

Impossibility of Performance

Although the BIA normally would be bound by the terms of a Housing Improvement Program grant agreement it had signed, it may be excused from performance in a case where performance is impossible.

Mildred Hartman v. Anadarko Area Director, Bureau of Indian Affairs, 23 IBIA 122 (Dec. 18, 1992)

CONVEYANCES

INTEREST CONVEYED

When unpatented mining claims have been donated to the NPS by quitclaim deed and the record before BLM discloses a dispute regarding the chain of title to the claims or the existence of encumbrances upon title to the claims, neither the regulations applicable to mining claims recordation nor the regulations governing acceptance of donated interests in real property authorizes BLM to adjudicate title to the claims and a decision purporting to do so is properly vacated.

David J. Bartoli, 123 IBLA 27 (Apr. 29, 1992)
99 I.D. 55

DELEGATION OF AUTHORITY

(See also Administrative Authority, Contracts)

Where the Colorado State Director, BLM, issued a decision approving a record of decision for an EIS regarding a vegetative treatment program for 13 western states, insofar as it related to public lands administered by BLM in Colorado, and the Ass't Secretary, Land and Minerals Management, subsequently concurred in selection of the vegetative treatment program, that concurrence amounted to Secretarial approval of the vegetative treatment program for BLM lands in 13 western states, including Colorado. Accordingly, the Board of Land Appeals lacks jurisdiction to consider an appeal of the Colorado State Director's decision file subsequent to the Ass't Secretary's action.

The Wilderness Society, 122 IBLA 162 (Feb. 6, 1992)

DESERT LAND ENTRY

CULTIVATION AND RECLAMATION

The raising of Xmas trees on desert land by means of irrigation and tilling the soil does not constitute cultivation as contemplated under the Desert Land Act, as amended, 43 U.S.C. §§ 321-339 (1988).

Robert J. Proctor et ux., 124 IBLA 363 (Dec. 8, 1992)

ENDANGERED SPECIES ACT OF 1973

GENERALLY

It is proper for BLM to deny a protest to a proposed timber sale when it has fully considered all of the probably site-specific and cumulative environmental impacts of the sale (including the impact on the Northern spotted owl, a Federally listed threatened species) and concluded that there will be no significant environmental impact not previously considered in an applicable EIS, and the appellant has failed to demonstrate otherwise.

It is proper for BLM to deny a protest to a proposed timber sale based on a contention that the sale was devised in accordance with an overall BLM strategy for the interim protection of the Northern spotted owl (a Federally listed threatened species) generally called the Jamison Strategy, if BLM has fully complied with sec. 7(a)(2) of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536(a)(2) (1988), and there is no evidence that if an alternative strategy had been adopted the effect of the sale upon the owl would be any different.

In re Cedar Pot Thinning Sale et al., 122 IBLA 53 (Jan. 9, 1992)

ENDANGERED SPECIES ACT OF 1973--Continued

GENERALLY--Continued

When all other challenges to a proposed timber sale have been resolved by Federal court action and the record, as supplemented on appeal, establishes that BLM fulfilled all of its responsibilities to conserve the Northern spotted owl (designated as threatened during the pendency of the appeal) imposed by the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531-1543 (1988), the Board will affirm BLM's decision to proceed with the sale.

Headwaters, Inc., 122 IBLA 362 (Mar. 20, 1992)

SECTION 7

Consultation

It is proper for BLM to deny a protest to a proposed timber sale based on a contention that the sale was devised in accordance with an overall BLM strategy for the interim protection of the Northern spotted owl (a Federally listed threatened species) generally called the Jamison Strategy, if BLM has fully complied with sec. 7(a)(2) of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536(a)(2) (1988), and there is no evidence that if an alternative strategy had been adopted the effect of the sale upon the owl would be any different.

In re Cedar Pot Thinning Sale et al., 122 IBLA 53 (Jan. 9, 1992)

ENVIRONMENTAL POLICY ACT

(See also National Environmental Policy Act of 1969)

It is proper for BLM to deny a protest to a proposed timber sale when it has fully considered all of the probably site-specific and cumulative environmental impacts of the sale (including the impact on the Northern spotted owl, a Federally listed threatened species) and concluded that there will be no significant environmental impact not previously considered in an applicable EIS, and the appellant has failed to demonstrate otherwise.

In re Cedar Pot Thinning Sale et al., 122 IBLA 53
(Jan. 9, 1992)

It is proper for BLM to deny a protest to a proposed timber sale contending that BLM failed to consider the impact of permitted overstory removal, salvage operations, and road building on the Pacific yew and that the proposed timber sale does not conform with applicable State office policy regarding management of the yew when BLM specifically reserved the yew from cutting in the sale contract, and the protestant submits no evidence that the sale may adversely affect the yew or that BLM is not abiding by its stated policy.

In re Grizzly Knob Timber Sale, 122 IBLA 155 (Feb. 4, 1992)

A determination that approval of a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made; all relevant areas of environmental concern have been identified; and the final determination is reasonable in light of the environmental analysis. A party challenging the determination must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the proposed

ENVIRONMENTAL POLICY ACT--Continued

action. The ultimate burden of proof is on the challenging party. Mere differences of opinion provide no basis for reversal. A BLM decision approving a proposal to conduct seismic oil and gas geophysical exploration will be set aside where the EA upon which the decision was based failed to consider the no-action alternative and inadequately analyzed the effects of the proposed activity on wildlife in the project area, and BLM failed to provide a public comment period on the EA.

Southern Utah Wilderness Alliance, 122 IBLA 334
(Mar. 11, 1992)

An EIS need not be prepared if, on the basis of an adequate EA, BLM finds that the proposed action will produce "no significant impact." A FONSI will be affirmed on appeal if the record shows that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable. Appellants bear the burden of proving error; expressing disagreement with BLM's actions is not enough to succeed on appeal. Where the party challenging the FONSI fails to show that it was premised on a clear error of law, a demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the action; and where BLM's EA is an extensive analysis of environmental concerns, the issuance of the FONSI will be affirmed.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83
(Sept. 15, 1992)

A determination that a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the determination

ENVIRONMENTAL POLICY ACT--Continued

must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. The ultimate burden of proof is on the challenging party, and such burden must be met by objective proof. Mere differences of opinion provide no basis for reversal.

The reasonableness of a FONSI will be upheld where the agency (1) has taken a hard look at the environmental consequences of the proposed action; (2) has identified the relevant areas of environmental concern; and (3) has made a convincing case that the impact is insignificant, or (4) if there is significant impact, that changes in the project have sufficiently minimized such impact. When the EA prepared for a proposed action identifies significant environmental impacts and suggests mitigating measures designed to minimize those impacts, but BLM's decision record/FONSI fails to incorporate the identified mitigating measures into the proposed action, BLM's decision will be set aside.

Sierra Club Legal Defense Fund, Inc., Citizen Alert,
124 IBLA 130 (Sept. 30, 1992)

When an EA of a proposed mining plan of operations for exploration does not include the analysis of whether potential mining is sufficiently specific to adequately analyze it at the exploration stage and of the details of the exploration process, the mining process, and other allegedly connected activities in the area that is necessary for BLM's decision to withstand judicial review, BLM's decision will be set aside and the matter remanded so the EA may be supplemented.

Concerned Citizens for Responsible Mining et al.,
124 IBLA 191 (Oct. 15, 1992)

ENVIRONMENTAL QUALITY

(See also Water Pollution Control)

GENERALLY

Pursuant to 43 CFR 3162.3-4(a), an operator shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by BLM, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a production well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities, unless BLM shall approve the use of the well as a service well for injection to recover additional oil or gas or for subsurface disposal of produced water. An order to plug and abandon a well will be affirmed where the record shows that the well has not produced for more than a decade and the operator's plans for a waterflood program have not been implemented despite over 18 months of delay awaiting favorable economic conditions.

ERC Industries, 124 IBLA 331 (Nov. 17, 1992)

ENVIRONMENTAL STATEMENTS

It is proper for BLM to deny a protest to a proposed timber sale when it has fully considered all of the probably site-specific and cumulative environmental impacts of the sale (including the impact on the Northern spotted owl, a Federally listed threatened species) and concluded that there will be no significant environmental impact not previously considered in an applicable EIS, and the appellant has failed to demonstrate otherwise.

In re Cedar Pot Thinning Sale et al., 122 IBLA 53 (Jan. 9, 1992)

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

It is proper for BLM to deny a protest to a proposed timber sale contending that BLM failed to consider the impact of permitted overstory removal, salvage operations, and road building on the Pacific yew and that the proposed timber sale does not conform with applicable State office policy regarding management of the yew when BLM specifically reserved the yew from cutting in the sale contract, and the protestant submits no evidence that the sale may adversely affect the yew or that BLM is not abiding by its stated policy.

In re Grizzly Knob Timber Sale, 122 IBLA 155 (Feb. 4, 1992)

It was proper for BLM to approve a notice of intent to conduct oil and gas geophysical exploration operations utilizing truck-mounted vibrating equipment and seismic wave-receiving stations after considering the environmental impact of the contemplated operations and alternatives thereto (including the no-action alternative), and concluding that no significant impact would result. Under the facts of this case, there was no error in BLM's failure to consider the possible subsequent drilling of a proposed well in the project area in conjunction with geophysical exploration operations.

Southern Utah Wilderness Alliance, Utah Chapter, Sierra Club, 122 IBLA 165 (Feb. 7, 1992)

A determination that approval of a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made; all relevant areas of environmental concern have been identified; and the final determination is reasonable in light of the environmental analysis. A party challenging the determination must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

question of material significance to the proposed action. The ultimate burden of proof is on the challenging party. Mere differences of opinion provide no basis for reversal. A BLM decision approving a proposal to conduct seismic oil and gas geophysical exploration will be set aside where the EA upon which the decision was based failed to consider the no-action alternative and inadequately analyzed the effects of the proposed activity on wildlife in the project area, and BLM failed to provide a public comment period on the EA.

Southern Utah Wilderness Alliance, 122 IBLA 334
(Mar. 11, 1992)

An EA may be tiered to an EIS. The purpose of tiering is to eliminate repetitive discussions of issues and allow focus on the issues ripe for decision. The similarity of environmental issues determines whether tiering is appropriate, not the nature of the decision made based upon the review. When an EA is tiered to an EIS, the question is whether the EIS adequately addresses the environmental effects of the proposed actions or whether, because the analysis is broad and does not address specific impacts, a supplemental statement is required.

When a programmatic EIS is sufficiently detailed, and there is not change in circumstances or departure from the policy in the programmatic EIS, no useful purpose would be served by requiring a site-specific EIS. Major variations between the actions considered in a broad EIS and a site-specific EA may vitiate compliance with NEPA. Conversely, the fact specific actions were anticipated in an EIS or matters addressed in the EIS were later carefully reviewed in regard to undertaking specific actions supports a finding of compliance with NEPA.

Absent an analysis of the possible consequences should proposed range-land improvement projects not be fully successful and lacking an analysis of the immediate

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

consequences of undertaking the projects, the Board cannot conclude that BLM has identified the relevant areas of environmental concern and has taken a hard look at the environmental consequences of the projects.

Southern Utah Wilderness Alliance, The Wilderness Society, Utah Chapter Sierra Club, 123 IBLA 302
(June 25, 1992)

An EA of a proposal to exchange public for private land is sufficiently detailed where it considers, generally, the environmental impact of likely development where no plans for development have yet been proposed and such plans, if and when formulated, will be subject to State environmental review.

Where review of the reasonably foreseeable impacts of a proposed exchange of public for private land, including likely development of the land, failed to disclose a potentially significant impact and there was no evidence to the contrary an EIS was not required to be prepared.

In conducting an environmental review of a proposal to exchange public for private land, BLM need not consider the alternative of conveying other land if it is not desired by the private party involved in the exchange and conveyance of such land would not satisfy the purpose of the exchange.

Howard B. Keck, Jr., 124 IBLA 44 (Aug. 26, 1992)

An EIS need not be prepared if, on the basis of an adequate EA, BLM finds that the proposed action will produce "no significant impact." A FONSI will be affirmed on appeal if the record shows that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable. Appellants bear

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

the burden of proving error; expressing disagreement with BLM's actions is not enough to succeed on appeal. Where the party challenging the FONSI fails to show that it was premised on a clear error of law, a demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the action; and where BLM's EA is an extensive analysis of environmental concerns, the issuance of the FONSI will be affirmed.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83 (Sept. 15, 1992)

Activity planning implementing an off-highway vehicle project management plan, based upon an environmental assessment sufficient to support an informed judgment, may not be overcome by a mere difference of opinion.

High Desert Multiple-Use Coalition et al., 124 IBLA 125 (Sept. 28, 1992)

A determination that a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the determination must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. The ultimate burden of proof is on the challenging party,

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

and such burden must be met by objective proof. Mere differences of opinion provide no basis for reversal.

The reasonableness of a FONSI will be upheld where the agency (1) has taken a hard look at the environmental consequences of the proposed action; (2) has identified the relevant areas of environmental concern; and (3) has made a convincing case that the impact is insignificant, or (4) if there is significant impact, that changes in the project have sufficiently minimized such impact. When the EA prepared for a proposed action identifies significant environmental impacts and suggests mitigating measures designed to minimize those impacts, but BLM's decision record/FONSI fails to incorporate the identified mitigating measures into the proposed action, BLM's decision will be set aside.

Sierra Club Legal Defense Fund, Inc., Citizen Alert,
124 IBLA 130 (Sept. 30, 1992)

When an EA of a proposed mining plan of operations for exploration does not include the analysis of whether potential mining is sufficiently specific to adequately analyze it at the exploration stage and of the details of the exploration process, the mining process, and other allegedly connected activities in the area that is necessary for BLM's decision to withstand judicial review, BLM's decision will be set aside and the matter remanded so the EA may be supplemented.

Concerned Citizens for Responsible Mining et al.,
124 IBLA 191 (Oct. 15, 1992)

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

BLM properly approves a plan for the drilling of a series of holes for the purpose of identifying the presence and extent of lead mineralization where it has adequately considered the impact of such drilling and associated activity on the environment, and determined that, given certain mitigation measures, any impact will be insignificant. BLM need not consider the impact of full-scale mining where approval of drilling does not commit BLM to approve further mining.

Missouri Coalition for the Environment et al., 124 IBLA 211 (Oct. 23, 1992)

BLM's decision to approve a mining plan amendment (1) to allow cyanide leaching operations at a gold mine to proceed and (2) to allow leach pads to be abandoned, and its accompanying FONSI will be affirmed where the record (including an extensive report demonstrating that abandonment of leach pads will not result in discharge of harmful levels of cyanide into the environment) reveals no unnecessary or undue degradation of the lands, and BLM's decision is not convincingly challenged on appeal.

The Board will affirm a FONSI with respect to a proposed action if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination that the impact is insignificant is reasonable in light of the environmental analysis. When mitigating measures are imposed to reduce impacts of the environmental effects of the proposed action that might otherwise be significant, a FONSI is properly affirmed.

"Cumulative impact" is the impact on the environment that results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or persons undertake such other actions. An EA examining the cyanide retention qualities of a heap leach operation need not include a discussion of an exploration

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

plan that, during the pendency of the appeal, is withdrawn by the operator.

Red Thunder, Inc., et al., 124 IBLA 267 (Nov. 3, 1992)

EQUAL ACCESS TO JUSTICE ACT

CONTRACT DISPUTES ACT OF 1978

Substantially Justified

The Government does not carry its burden to show substantial justification such as would bar recovery under the EAJA by merely reciting the great size of the quantum request; the great size of the quantum request may well counsel a vigorous litigatory defense by the Government, but it does not substitute for a showing that the position taken in that litigation was substantially justified. Similarly, the disparity between the amount requested and the decision's quantum amount does not substitute for a showing of substantial justification, especially where the great bulk of the difference is attributable to the contractor's failure to prevail on a legitimate issue which took a relatively small part of the entire litigatory effort in the case.

Application of Harvey C. Jones, Inc., for Fees & Expenses Under EAJA, IBCA-2758-F (June 2, 1992)

99 I.D. 73

ESTOPPEL

An agency is bound to adhere to criteria previously published by the agency to control future conduct. Where it is alleged that there has been a breach of this duty to be consistent in dealings with affected persons, there must be shown to be previously published criteria or pattern of conduct from which there has been a deviation. Where there is no such showing, there is no foundation for a finding of estoppel on this ground.

The allegation that a mining claimant refrained from opening a collapsed portal on a lode claim in reliance on a conversation with a FS employee was insufficient to establish grounds for estoppel of the Government to contest the validity of the claim where the portal was found.

United States v. American Independence Mines & Minerals,
122 IBLA 177 (Feb. 10, 1992)

When OSM and a coal miner agree that OSM will suspend enforcement of SMCRA while the miner pursues litigation in Federal court to determine whether a Federal coal mining permit is needed, enforcement may proceed when the Federal court litigation is ended.

Gabriel Energy Corp. v. Office of Surface Mining
Reclamation & Enforcement, 122 IBLA 316 (Mar. 11, 1992)

The Board will apply the doctrine of estoppel to a situation where certificates of location are filed for recordation with a BLM State Office and that office informs the claimant by letter, which constitutes an official decision, of its refusal to accept them due to a postdated check for the recordation fees, but fails to inform him that the office is not the "proper office of BLM" in which to file the certificates. Where the claimant in reliance thereon refiles the certificates with the same State Office and they are rejected, such

ESTOPPEL--Continued

failure constitutes the affirmative concealment of a material fact.

Leitmotif Mining Co., Inc., 124 IBLA 344 (Dec. 1, 1992)

BLM properly requires the holder of a communications site right-of-way to pay rental charges, in addition to those originally estimated at the time of issuance of the right-of-way grant, based upon an appraisal of the fair market rental value of the right-of-way.

Voice Ministries of Farmington, Inc., 124 IBLA 358 (Dec. 4, 1992)

EVIDENCE

PRESUMPTIONS

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them is rebuttable by probative evidence to the contrary. The presumption is rebutted where the mining claimant provides copies of affidavits of assessment work timely filed with BLM for 45 claims, a copy of a document filed with BLM stating that evidence of assessment work for 52 claims was being filed along with \$260, and a "Receipt and Accounting Advice" acknowledging receipt of that amount of money, and BLM has not refunded any of that money. Such evidence of assessment work was filed for all 52 claims.

Silver King Mining Co., 122 IBLA 357 (Mar. 19, 1992)

EVIDENCE--Continued

SUFFICIENCY

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them is rebuttable by probative evidence to the contrary. The presumption is rebutted where the mining claimant provides copies of affidavits of assessment work timely filed with BLM for 45 claims, a copy of a document filed with BLM stating that evidence of assessment work for 52 claims was being filed along with \$260, and a "Receipt and Accounting Advice" acknowledging receipt of that amount of money, and BLM has not refunded any of that money. Such evidence of assessment work was filed for all 52 claims.

Silver King Mining Co., 122 IBLA 357 (Mar. 19, 1992)

EXCHANGES OF LAND

(See also Indians, Private Exchanges, State Exchanges, Wildlife Refuges & Projects)

GENERALLY

Protests against an exchange of public land for private land under the authority of sec. 206 of FLPMA are properly dismissed if the protestants do not establish that the proposed exchange would violate the Act, applicable regulations, or contravene the public interest. While an oil and gas lessee may be individually inconvenienced by an exchange that transfers the surface estate out of Federal control, this fact alone, in the absence of a showing that lease rights have been diminished, is insufficient to establish that the exchange is not in the interest of the United States.

Barrett S. Duff, 122 IBLA 244 (Feb. 26, 1992)

EXCHANGES OF LAND--Continued

GENERALLY--Continued

BLM's appraisal of the values of land involved in a proposed exchange under sec. 206 of FLPMA, 43 U.S.C. § 1716 (1988), as amended, will not be overturned when an independent appraisal does not establish its methodology or results were in error.

W. J. & Betty Lo Wells, 122 IBLA 250 (Feb. 28, 1992)

Lands conveyed to the U.S. under 16 U.S.C. § 485 (1988), become, upon acceptance of title, a part of the national forest within whose external boundaries they are located. The Office of the General Counsel for the U.S. Dept. of Agriculture has stated that acceptance of title is not final until the final title opinion is issued by that office. It is therefore the date on which the Office of the General Counsel accepts title that determines when exchanged land is subject to location of mining claims.

Robert S. Glenn, DeLoyd Cazier, 124 IBLA 104 (Sept. 17, 1992)

FOREST EXCHANGES

Lands conveyed to the U.S. under 16 U.S.C. § 485 (1988), become, upon acceptance of title, a part of the national forest within whose external boundaries they are located. The Office of the General Counsel for the U.S. Dept. of Agriculture has stated that acceptance of title is not final until the final title opinion is issued by that office. It is therefore the date on which the Office of the General Counsel accepts title that determines when exchanged land is subject to location of mining claims.

Robert S. Glenn, DeLoyd Cazier, 124 IBLA 104 (Sept. 17, 1992)

FEDERAL EMPLOYEES AND OFFICERS

(See also Administrative Authority, Claims Against the United States, Officers & Employees)

GENERALLY

Rental rate adjustment determinations, modified below to change the effective date for implementation of the adjustments, will be affirmed on appeal where appellants fail to submit evidence which would warrant any further adjustment in the rental rates concerned.

Quarters Rental Rate Appeals of Messrs. Frank S. Alby & Hamilton Greely, 9 OHA 155 (Apr. 29, 1992)

A decision signed by an Acting Area Director of BIA has the same status as a decision signed by the Area Director.

Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, Bureau of Indian Affairs, 22 IBIA 153 (June 26, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

(See also Hearings, Rights-of-Way)

GENERALLY

Where, under the general authority of the Secretary of the Interior to regulate the use of public lands pursuant to FLPMA, and other acts and Executive Orders, BLM makes a determination to limit off-road vehicle use in a certain area of public lands, one challenging that determination must provide compelling reasons for modification or reversal. Failure to do so will result in the determination being affirmed on appeal when it is supported by the record.

Stan Rachesky, 124 IBLA 67 (Sept. 2, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK

Where, in the absence of an approved plan of operations, a mining claimant cuts live trees in the course of road improvement activities on his mining claims, which are situated within a WSA, the impact of such activities exceeds in manner and degree the activities on the claims on Oct. 21, 1976, or temporarily suspended on that date, and impairs the suitability of the land for preservation as wilderness, BLM properly requires him to immediately rehabilitate the impact of those activities.

Richard C. Behnke, 122 IBLA 131 (Jan. 27, 1992)

EXCHANGES

Protests against an exchange of public land for private land under the authority of sec. 206 of FLPMA are properly dismissed if the protestants do not establish that the proposed exchange would violate the Act, applicable regulations, or contravene the public interest. While an oil and gas lessee may be individually inconvenienced by an exchange that transfers the surface estate out of Federal control, this fact alone, in the absence of a showing that lease rights have been diminished, is insufficient to establish that the exchange is not in the interest of the United States.

Barrett S. Duff, 122 IBLA 244 (Feb. 26, 1992)

BLM's appraisal of the values of land involved in a proposed exchange under sec. 206 of FLPMA, 43 U.S.C. § 1716 (1988), as amended, will not be overturned when an independent appraisal does not establish its methodology or results were in error.

W. J. & Betty Lo Wells, 122 IBLA 250 (Feb. 28, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

EXCHANGES--Continued

It is proper for BLM to reject an application to amend an existing F&PP lease to permit substantial expansion of a solid-waste management station for collection of household refuse for transfer to a sanitary landfill because the intended expansion is contrary to existing BLM policy restricting authorization of sites for solid-waste disposal and related purposes to FLPMA sales and exchanges pending implementation of the R&PP Amendment Act of 1988, P.L. 100-648, 102 Stat. 3813.

Clark County, Nevada, 123 IBLA 150 (May 28, 1992)

An EA of a proposal to exchange public for private land is sufficiently detailed where it considers, generally, the environmental impact of likely development where no plans for development have yet been proposed and such plans, if and when formulated, will be subject to State environmental review.

Where review of the reasonably foreseeable impacts of a proposed exchange of public for private land, including likely development of the land, failed to disclose a potentially significant impact and there was no evidence to the contrary an FIS was not required to be prepared.

In conducting an environmental review of a proposal to exchange public for private land, BLM need not consider the alternative of conveying other land if it is not desired by the private party involved in the exchange and conveyance of such land would not satisfy the purpose of the exchange.

Howard B. Keck, Jr., 124 IBLA 44 (Aug. 26, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

EXCHANGES--Continued

An application to lease land for agricultural purposes to one applicant was properly rejected where another applicant had applied to acquire title to the land by exchange and BLM decided, for the sake of consistency in management of the land, to lease it to the exchange applicant pending completion of the exchange.

Rolling Stone, Inc., 124 IBLA 242 (Nov. 2, 1992)

GRAZING LEASES AND PERMITS

It is within the authorized officer's discretionary authority to grant "affected interest" status pursuant to 43 CFR 4100.0-5, for purposes of being involved in grazing management pursuant to the applicable regulations in 43 CFR Part 4100, to a person who has used grazing allotment lands for recreation and filed a written request for affected interest status.

Donald K. Majors, 123 IBLA 142 (May 28, 1992)

LAND-USE PLANNING

Activity planning implementing an off-highway vehicle project management plan, based upon an environmental assessment sufficient to support an informed judgment, may not be overcome by a mere difference of opinion.

High Desert Multiple-Use Coalition et al., 124 IBLA 125 (Sept. 28, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

LAND-USE PLANNING--Continued

A BLM decision implementing a final project plan for the development of a recreation site on public land will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, absent a showing of clear reasons of modification or reversal.

Gerry Zamora, Joe Zamora, 125 IBLA 10 (Dec. 14, 1992)

A BLM decision to implement a RMP by reintroducing pronghorn antelope onto public lands pursuant to a cooperative agreement with the State will be affirmed on appeal if the decision is based on a consideration of all relevant factors, including the threat of damage to adjacent private land resources, and is supported by the record, absent a showing of clear reasons for modification or reversal.

Lands of Sierra, Inc., 125 IBLA 15 (Dec. 17, 1992)

LEASES

It is within BLM's authority to require an owner of a tract of private land within a designated wilderness area to obtain a lease of lands used for vehicular access to the inholding pursuant to sec. 302(b) of FLPMA, 43 U.S.C. § 732(b) (1988).

If the appraisal setting fair market rental value fails to consider the effect of restrictive clauses limiting the use and enjoyment of the leased land on the fair market rental value, the appraisal will be set aside and the case file will be remanded to consider rental reductions reflecting those restrictions.

Mathilda B. Williams, Jack F. Brown, 124 IBLA 7 (Aug. 13, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

LEASES--Continued

An application to lease land for agricultural purposes to one applicant was properly rejected where another applicant had applied to acquire title to the land by exchange and BLM decided, for the sake of consistency in management of the land, to lease it to the exchange applicant pending completion of the exchange.

Rolling Stone, Inc., 124 IBLA 242 (Nov. 2, 1992)

PERMITS

The number of passenger days allocated to a holder of a commercial special recreation permit was properly reduced from 200 to 190 days for lack of use under a permit provision establishing a mechanism whereby past performance was to be used to fix passenger allocations.

Colorado River & Trail Expeditions, Inc., 123 IBLA 374 (July 23, 1992)

Under sec. 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1988), and the implementing regulations in 43 CFR Subpart 2920, BLM has discretion to reject a proposal for use of lands which conflicts with BLM policy for management of the public lands involved. BLM properly rejects a proposal for a permit authorizing the use of assault weapons on public lands where such rejection is based on the State Director's IM. No. CA-90-155 in which he establishes a policy of closing BLM lands in California to the possession of assault weapons as defined by State law.

Where, under the authority of the Secretary of the Interior to issue permits pursuant to sec. 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1988), and 43 CFR Subpart 2920, BLM rejects a proposal for a permit authorizing the use of assault weapons on public lands based on the State Director's IM No. CA-90-155 in which he establishes a policy of closing BLM land in California

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

PERMITS--Continued

to the possession of assault weapons as defined by State law, on challenging that determination must provide compelling reasons for modification or reversal. Failure to do so will result in the determination being affirmed on appeal when it is supported by the record.

Organized Sportsmen of Lassen County, 124 IBLA 325
(Nov. 6, 1992)

PLAN OF OPERATIONS

Where, in the absence of an approved plan of operations, a mining claimant cuts live trees in the course of road improvement activities on his mining claims, which are situated within a WSA, the impact of such activities exceeds in manner and degree the activities on the claims on Oct. 21, 1976, or temporarily suspended on that date, and impairs the suitability of the land for preservation as wilderness, BLM properly requires him to immediately rehabilitate the impact of those activities.

Richard C. Behnke, 122 IBLA 131 (Jan. 27, 1992)

The Secretary of the Interior is required by sec. 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1988), to manage lands under review for wilderness suitability so as to prevent impairment of their wilderness characteristics, subject to grandfathered uses and valid existing rights. Under this standard, a plan of operations for a mining claim located after 1976 is properly rejected if it entails impacts which cannot be reclaimed to the point of being substantially unnoticeable by the time the Secretary is to make his recommendation regarding wilderness designation.

Enactment of sec. 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1988), had the effect of amending the Mining Law of 1872 to the extent of precluding mining-related

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

PLAN OF OPERATIONS--Continued

activities on lands within a WSA which would impair the wilderness characteristics of the area except for valid existing rights and the continuation of pre-FLPMA mining activities in the same manner and degree as conducted on Oct. 21, 1976.

Under the regulations at 43 CFR Subpart 3802 governing mining operations within a WSA, a failure of BLM to adjudicate the plan of operations within the time allowed does not constitute approval of the plan. Although a claimant may proceed, pursuant to 43 CFR 3802.1-5(e), with activities proposed in a plan of operations before agency approval is obtained, if BLM later determines that the action taken impairs wilderness suitability of affected lands it may properly take action to modify or terminate the offending activity.

A mineral entry final certificate is prepared by BLM for a mining claim after it has determined on the basis of the documents submitted that the claim is apparently valid in that: the land was available at the time of location; acts necessary to keep it in force including annual assessment work have been done; no adverse claim exists; and the applicant has paid the purchase price. However, a mineral examination to establish the discovery of a locatable valuable mineral deposit on the claim is still required to support a patent and, as long as title remains in the United States, mining activities are properly regulated pursuant to relevant statutes and regulations to protect the surface resources.

Internat'l Silica Corp., 124 IBLA 155 (Sept. 30, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

PUBLIC PARTICIPATION

It is within the authorized officer's discretionary authority to grant "affected interest" status pursuant to 43 CFR 4100.0-5, for purposes of being involved in grazing management pursuant to the applicable regulations in 43 CFR Part 4100, to a person who has used grazing allotment lands for recreation and filed a written request for affected interest status.

Donald K. Majors, 123 IBLA 142 (May 28, 1992)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE
OF INTENTION TO HOLD MINING CLAIM

Failure to file in the proper BLM office either evidence of assessment work performed or notice of intention to hold as required by 43 U.S.C. § 1744 (1988), and 43 CFR 3833.2 within the time period prescribed results in a conclusive presumption of abandonment of the mining claim.

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them is rebuttable by probative evidence to the contrary. The presumption is rebutted where the mining claimant provides copies of affidavits of assessment work timely filed with BLM for 45 claims, a copy of a document filed with BLM stating that evidence of assessment work for 52 claims was being filed along with \$260, and a "Receipt and Accounting Advice" acknowledging receipt of that amount of money, and BLM has not refunded any of that money. Such evidence of assessment work was filed for all 52 claims.

Silver King Mining Co., 122 IBLA 357 (Mar. 19, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE
OF INTENTION TO HOLD MINING CLAIM--Continued

In accordance with 43 CFR 3833.1-3, annual filings for mining claims must be accompanied by a nonrefundable service charge of \$5 for each claim. Annual filings received by BLM on or after Jan. 1, 1991, which are not accompanied by the proper service charges are, according to 43 CFR 3833.1-4(b), not to be accepted and are to be returned to the claimant/owner without further action. Thus, there can be no timely annual filing without the accompanying service charge and if the filing deadline passes without proper payment, the claims may be properly declared abandoned and void.

Where a mining claimant timely files evidence of annual assessment work for 15 claims, but only timely tenders sufficient service charges to cover the filing of eight of those claims, and the record contains no evidence of how the service fee is to be applied, BLM shall require the claimant to select the eight claims to which the money tendered should be applied. The remaining seven claims may be properly declared abandoned and void.

Norman Filip, 124 IBLA 122 (Sept. 24, 1992)

RECORDATION OF MINING CLAIM CERTIFICATES OR
NOTICES OF LOCATION

It is proper for BLM to reject location notices for placer mining claims submitted for recordation under 43 CFR 3833.1-4(a) because the claimants failed to tender the proper service charge within 30 days from the date claimants were deemed to have constructively received a deficiency notice requiring such payment. The record establishes that the deficiency notice was addressed to and the post office properly attempted delivery to the claimants' last address of record.

Gerhard W. Befeld, Marie D. Befeld, 123 IBLA 118
(May 19, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIM CERTIFICATES OR
NOTICES OF LOCATION--Continued

Under 43 CFR 3833.1-4(a), where a mining claimant submitted affidavits of assessment work and the accompanying check for service charges was not honored by his bank, it was improper for BLM to reject the affidavits without first providing him with a deficiency notice informing him that he had 30 days from receipt of the notice in which to submit the required service fee.

R. Keith Barrett, 123 IBLA 240 (June 12, 1992)

The "proper office of BLM" for purposes of recording mining claims is defined in 43 CFR 3833.0-5(g) as the BLM office listed in 43 CFR 1821.1-2(d) as having jurisdiction over the area in which the claims are located.

The Board will apply the doctrine of estoppel to a situation where certificates of location are filed for recordation with a BLM State Office and that office informs the claimant by letter, which constitutes an official decision, of its refusal to accept them due to a postdated check for the recordation fees, but fails to inform him that the office is not the "proper office of BLM" in which to file the certificates. Where the claimant in reliance thereon refiles the certificates with the same State Office and they are rejected, such failure constitutes the affirmative concealment of a material fact.

Leitmotif Mining Co., Inc., 124 IBLA 344 (Dec. 1, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RESERVATION AND CONVEYANCE OF MINERAL INTERESTS

BLM properly rejects an application for conveyance of a Federally owned mineral interest, pursuant to sec. 209(b) of FLPMA, 43 U.S.C. § 1719(b) (1988), where the applicant fails to establish that there are no known mineral values in the land or that reservation of the mineral interest is interfering with or precluding appropriate nonmineral development, and that such development is a more beneficial use of the land than mineral development.

William Y. Ganus et ux., 122 IBLA 255 (Feb. 28, 1992)

Under sec. 209(b) of FLPMA and implementing regulations, lands that do not have "known mineral values" may be conveyed to the owner of the surface estate. BLM's decision that the lands possess locatable and fluid leasable minerals that constitute "known mineral values" is properly affirmed on appeal where it is based on a thorough mineral report citing reliable sources, and where the applicants for conveyance fail to meet their burden of showing that it is inaccurate.

Under 43 CFR 2720.0-5, land may be properly found to possess "known mineral values" for locatable minerals even if there is no exposure of mineralization at the surface. The presence of minerals under the surface may be established, subject to being disproved by the applicant, by inference from geologic conditions. Where BLM prepares a mineral report relying on authorities that have so established, its finding will be affirmed.

An absence of proof of discoveries of valuable mineral deposits under the General Mining Law of 1872 in the vicinity of lands subject to applications for conveyance of Federal mineral interests is not relevant to whether those lands possess "known mineral values" for locatable minerals under 43 CFR 2720.0-5, which establishes an entirely different, and far less stringent, requirement than the "discovery" rule applicable to the validity of mining claims. Thus, the lack of valid claims in the area does not preclude a finding that the lands possess "known mineral values."

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RESERVATION AND CONVEYANCE OF MINERAL INTERESTS--Continued

If lands possess "known mineral values," the mineral estate for such lands may nevertheless be conveyed to the record owner of the surface under sec.209(b) of FLPMA if the reservation of mineral rights in the United States would interfere with appropriate "nonmineral development" of the land, provided that the nonmineral development is a more beneficial use of the land than mineral development. However, use of the surface of lands patented under the Stock-Raising Homestead Act for grazing is not "nonmineral development" under the meaning of the statute.

Where applicants for conveyance of retained mineral interest under sec. 209(b) of FLPMA merely assert that there is a chance that homes and businesses will be built on the lands applied for, but submit no proof of imminent development, they have failed to establish that there has been nonmineral development. Allegation, hypothesis, or speculation that appropriate nonmineral development might take place at some future time is not a sufficient basis for conveyance. 43 CFR 2720.0-6.

An applicant for conveyance of retained mineral interest is required to cover administrative costs of the application and to pay a deposit against which those costs may be charged. 43 U.S.C. § 209(b)(3) (1988); 43 CFR 2720.1-3(b)(1). Where applicants do not show that BLM's charges have been excessive, they will not be disturbed on appeal.

Wayne D. Klump et al., 123 IBLA 51 (May 11, 1992)
99 I.D. 64

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY

Absent a demonstration that BLM's method for appraising the value of the linear and site components of a right-of-way granted for a hydroelectric power facility is erroneous or the rental is clearly excessive, a BLM decision adjusting the rental is properly affirmed.

Bear Creek Hydro, 122 IBLA 200 (Feb. 10, 1992)

An appraisal of a right-of-way will not be set aside unless BLM has erred in applying the proper criteria to calculate the fair market rental value or the appellant shows that the resulting charges are excessive. Absent error in the appraisal methods utilized, an appellant is normally required to submit another appraisal in order to present sufficiently convincing evidence that the rental charges are excessive.

KPVI Channel 6, 122 IBLA 263 (Mar. 3, 1992)

Where BLM issues a decision denying the assignment of a salt water disposal right-of-way and such decision is merely conclusory in nature, the record is barren of any supporting rationale, and other unaddressed issues are presented, the decision will be set aside and the case remanded for BLM to reassess assignment of the right-of-way and determine what steps are necessary for the protection of the Federal mineral interest in the land in question.

Burnett Oil Co., Inc., 122 IBLA 330 (Mar. 11, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

An appraisal of the fair market rental value of a reservoir right-of-way will be upheld on appeal where no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

A decision initially advising the holder of a right-of-way of the fair market rental value of the grant and billing that amount more than 6 years after issuance of the right-of-way may be set aside and remanded for consideration of whether in the public interest the rental charge should be reduced on the basis of undue hardship to the holder under the regulation at 43 CFR 2803.1-2(b)(2)(iv) where the reservoir authorized by the right-of-way was never constructed.

V. Irene Wallace, 122 IBLA 349 (Mar. 12, 1992)

Any use or occupancy of the public lands such as for radio broadcasting which requires a right-of-way or temporary use permit, which use has not been authorized, is prohibited and shall constitute a trespass for which the trespasser is liable for administrative costs, damages, and penalties under the regulations at 43 CFR 2801.3.

An assessment of damages for a willful trespass is properly affirmed where appellant's conduct constituted a voluntary or conscious trespass in that the evidence shows appellant knew of the lack of authority to use the public lands for communication site purposes.

High Desert Communications, Inc., 123 IBLA 20 (Apr. 24, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

BLM properly increased the rental for an existing FLPMA linear right-of-way using the regulatory rental fee schedule for linear rights-of-way, when the regulation calling for rental adjustment at least once every 5 years was expressly incorporated into appellant's right-of-way grant, and the regulatory fee schedule was applicable during the course of a periodic adjustment necessary to reflect the then current fair market rental value.

Jack C. Gutte, 123 IBLA 295 (June 23, 1992)

A rental rate adjustment for a right-of-way for a hydroelectric power plant under 43 CFR 2803.1-2 will be set aside and remanded so that the BLM Manual may apply policies and procedures that are being developed for determining rentals for such rights-of-way.

Bear Creek Hydro (On Reconsideration), 124 IBLA 225 (Oct. 27, 1992)

BLM properly requires the holder of a communications site right-of-way to pay rental charges, in addition to those originally estimated at the time of issuance of the right-of-way grant, based upon an appraisal of the fair market rental value of the right-of-way.

Voice Ministries of Farmington, Inc., 124 IBLA 358 (Dec. 4, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

SALES

It is proper for BLM to reject an application to amend an existing F&PP lease to permit substantial expansion of a solid-waste management station for collection of household refuse for transfer to a sanitary landfill because the intended expansion is contrary to existing BLM policy restricting authorization of sites for solid-waste disposal and related purposes to FLPMA sales and exchanges pending implementation of the R&PP Amendment Act of 1988, P.L. 100-648, 102 Stat. 3813.

Clark County, Nevada, 123 IBLA 150 (May 28, 1992)

SERVICE CHARGES

It is proper for BLM to reject location notices for placer mining claims submitted for recordation under 43 CFR 3833.1-4(a) because the claimants failed to tender the proper service charge within 30 days from the date claimants were deemed to have constructively received a deficiency notice requiring such payment. The record establishes that the deficiency notice was addressed to and the post office properly attempted delivery to the claimants' last address of record.

Gerhard W. Befeld, Marie D. Befeld, 123 IBLA 118
(May 19, 1992)

Under 43 CFR 3833.1-4(a), where a mining claimant submitted affidavits of assessment work and the accompanying check for service charges was not honored by his bank, it was improper for BLM to reject the affidavits without first providing him with a deficiency notice informing him that he had 30 days from receipt of the notice in which to submit the required service fee.

R. Keith Barrett, 123 IBLA 240 (June 12, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

SURFACE MANAGEMENT

A mining plan of operations limited in duration to operations on land in a wild and scenic river study area in 1989 was not shown to continue in effect after Dec. 31, 1989.

A mining plan of operations was properly required for dredging operations in a wild and scenic river study area pursuant to Departmental regulation 43 CFR 3809.1-4 when claimants failed to show that their operations were excepted from the general rule that mining in such a study area required submission of a plan of operations.

Pierre J. Ott, Jim D. Wills, 122 IBLA 371 (Apr. 2, 1992)

When an EA of a proposed mining plan of operations for exploration does not include the analysis of whether potential mining is sufficiently specific to adequately analyze it at the exploration stage and of the details of the exploration process, the mining process, and other allegedly connected activities in the area that is necessary for BLM's decision to withstand judicial review, BLM's decision will be set aside and the matter remanded so the EA may be supplemented.

Concerned Citizens for Responsible Mining et al.,
124 IBLA 191 (Oct. 15, 1992)

WILDERNESS

A protest against sale of oil and gas leases that contends the sale should not proceed because the land to be leased has wilderness characteristics is properly dismissed because the final administrative determination that the land was not wilderness in character was made

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

in 1985 when BLM and the Board decided not to include the land at issue in a WSA.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

Where, in the absence of an approved plan of operations, a mining claimant cuts live trees in the course of road improvement activities on his mining claims, which are situated within a WSA, the impact of such activities exceeds in manner and degree the activities on the claims on Oct. 21, 1976, or temporarily suspended on that date, and impairs the suitability of the land for preservation as wilderness, BLM properly requires him to immediately rehabilitate the impact of those activities.

Richard C. Behnke, 122 IBLA 131 (Jan. 27, 1992)

Failure to appeal a decision designating an area as a WSA renders it final and precludes a party from later challenging it on appeal of a subsequent BLM decision approving a road restoration project within the WSA.

A BLM decision approving a road restoration project in a WSA will be sustained on appeal notwithstanding the fact that it may not be possible to restore all roads within the WSA to a substantially unnoticeable condition, as to hold otherwise would defeat legislative intent demonstrated in FLPMA and the Wilderness Act.

San Juan County Commission, 123 IBLA 68 (May 11, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

A mining claimant who constructs a road and clears land in a WSA in connection with a post-FLPMA mining claim violates 43 CFR 3802.1-1 by failing to file a plan of operations and receive approval prior to beginning work. Such unauthorized actions constitute a trespass under 43 CFR 2801.3.

A mining claimant who violates 43 CFR 3802.1 by constructing a road in a WSA in conjunction with a mining claim without filing and receiving approval of a plan of operations or who violates 43 CFR 3809.1-3(a) by constructing an access road across public lands to a mining claim without filing a notice of such action with BLM is liable for the costs of rehabilitating and stabilizing such lands and for costs incurred by the United States in the investigation and termination of such trespass.

Karry K. Klump, 123 IBLA 377 (July 23, 1992)

The Secretary of the Interior is required by sec. 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1988), to manage lands under review for wilderness suitability so as to prevent impairment of their wilderness characteristics, subject to grandfathered uses and valid existing rights. Under this standard, a plan of operations for a mining claim located after 1976 is properly rejected if it entails impacts which cannot be reclaimed to the point of being substantially unnoticeable by the time the Secretary is to make his recommendation regarding wilderness designation.

Enactment of sec. 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1988), had the effect of amending the Mining Law of 1872 to the extent of precluding mining-related activities on lands within a WSA which would impair the wilderness characteristics of the area except for valid existing rights and the continuation of pre-FLPMA mining

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

activities in the same manner and degree as conducted on Oct. 21, 1976.

Under the regulations at 43 CFR Subpart 3802 governing mining operations within a WSA, a failure of BLM to adjudicate the plan of operations within the time allowed does not constitute approval of the plan. Although a claimant may proceed, pursuant to 43 CFR 3802.1-5(e), with activities proposed in a plan of operations before agency approval is obtained, if BLM later determines that the action taken impairs wilderness suitability of affected lands it may properly take action to modify or terminate the offending activity.

A mineral entry final certificate is prepared by BLM for a mining claim after it has determined on the basis of the documents submitted that the claim is apparently valid in that: the land was available at the time of location; acts necessary to keep it in force including annual assessment work have been done; no adverse claim exists; and the applicant has paid the purchase price. However, a mineral examination to establish the discovery of a locatable valuable mineral deposit on the claim is still required to support a patent and, as long as title remains in the United States, mining activities are properly regulated pursuant to relevant statutes and regulations to protect the surface resources.

Internat'l Silica Corp., 124 IBLA 155 (Sept. 30, 1992)

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982

GENERALLY

In enacting sec. 102(a) of FOGRMA, 30 U.S.C. § 1712(a) (1988), Congress did not expand the Secretary's authority but allowed him to determine, under existing authority of law, which person is responsible for making royalty payments.

Sec. 102(a) of FOGRMA, 30 U.S.C. § 1712(a) (1988), requires a lessee to notify the Secretary of the assignment of the obligation to pay royalty. Sec. 3(7) of FOGRMA, 30 U.S.C. § 1702(7) (1988), defines lessee as including any person who has been assigned an obligation to make a royalty or other payment required by a lease. Under secs. 102(a) and 3(7) of FOGRMA, for a person who holds no interest in a lease to be liable for the lessee's royalty payments, the lessee and the person must have agreed to an assignment of the obligation to pay royalty, and notice of that assignment or either evidence of or notice of an assignment, and filing a PIF, without more, does not render the person filing it a lessee under sec. 3(7) of FOGRMA, 30 U.S.C. § 1702(7) (1988). There must be a document assigning the obligation to make royalty payments or a contract or agreement stating this obligation.

The assignment of the obligation to make royalty payments is not related to an assignment of a lease or an interest in a lease that must be approved by BIA under 25 CFR 212.22.

The making of royalty payments and the filing of PIFs are not sufficient evidence to indicate an intent to be bound as an agent by lessees' obligation to pay royalty.

Mesa Operating Ltd Partnership, 125 IBLA 28 (Dec. 31, 1992) 99 I.D. 272

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982

--Continued

CIVIL PENALTIES

Assessments for the late reporting of royalties pursuant to 30 CFR 218.40 are properly distinguished from penalties assessed under sec. 109 of FOGPMA, 30 U.S.C. § 1719 (1988), and do not effectively increase the royalty rate designated in an oil and gas lease.

By choosing the method of delivery of its report of sales and royalty remittance (Form MMS-2014), the payor must accept the responsibility for and bear the consequences of that choice, including the possibility of delay in delivery or nondelivery of the report.

Linmar Petroleum Co., 123 IBLA 45 (May 6, 1992)

ROYALTIES

"Marketable condition rule." A Federal oil and gas lessee is under an obligation to assume the expenses of placing any gas produced and sold into "marketable condition." No deduction from royalty is allowed for the expenses of compressing gas required to place it in marketable condition regardless of whether these costs are paid directly by the lessee or by a third party. The price of gas sold at the wellhead which has been reduced from the price of gas in marketable condition by the costs of compressing it as required for marketing to a pipeline purchaser does not establish the value of the gas in marketable condition.

Beartooth Oil & Gas Co., 122 IBLA 267 (Mar. 3, 1992)

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982
--Continued

ROYALTIES--Continued

MMS may properly require a Federal gas lessee to furnish a report derived from information in corporate records concerning royalty payments, even if some of the documents needed to produce the report are over 6 years old.

Discovery of an anomaly in royalty reporting arising during refund proceedings on a Federal lease provided a reasonable foundation for an investigation into the possibility that other similar errors had also occurred.

MMS may properly require a Federal gas lessee to furnish a report concerning identified payment errors to be prepared from corporate royalty payment records. If regulations currently in effect do not require a payor to research and analyze payment records and report specified reporting errors, special orders providing adequate guidance for reporting will provide a foundation that permits the required report to be completed.

Amoco Production Co., 123 IBLA 278 (June 18, 1992)

Under 30 U.S.C. § 1714 (1988), the Department of the Interior lacks authority to escrow oil and gas royalties derived from production on Indian lands, or allocated thereto, beyond the last business day of the month in which they were received.

Cherokee Nation of Oklahoma, Chickasaw Nation, & Choctaw Nation of Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 240 (Aug. 24, 1992)

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982
--Continued

ROYALTIES--Continued

FERC Order No. 94 reimbursements paid to a lessee by a pipeline purchaser of gas from OCS oil and gas leases for certain production-related expenses, not included in the ceiling price for delivered gas, may be considered part of the lessee's gross proceeds for purposes of calculation of royalties. A request for a refund of royalties paid on such reimbursements may be properly denied.

Pogo Producing Co., 124 IBLA 76 (Sept. 9, 1992)

MMS properly required a Federal and Indian oil and gas lessee to review royalty accounts in order to determine whether royalty underpayment was caused by exclusion of state tax reimbursements from gross proceeds of sales of oil and gas.

The Federal and Indian lessee was properly required to compute and pay additional royalties where there was evidence of systematic exclusion of tax reimbursements in reporting production proceeds for royalty purposes.

BHP Petroleum (Americas) Inc., 124 IBLA 185 (Oct. 14, 1992)

In enacting sec. 102(a) of FOGRMA, 30 U.S.C. § 1712(a) (1988), Congress did not expand the Secretary's authority but allowed him to determine, under existing authority of law, which person is responsible for making royalty payments.

Sec. 102(a) of FOGRMA, 30 U.S.C. § 1712(a) (1988), requires a lessee to notify the Secretary of the assignment of the obligation to pay royalty. Sec. 3(7) of FOGRMA, 30 U.S.C. § 1702(7) (1988), defines lessee as

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982
--Continued

ROYALTIES--Continued

including any person who has been assigned an obligation to make a royalty or other payment required by a lease. Under secs. 102(a) and 3(7) of FOGPMA, for a person who holds no interest in a lease to be liable for the lessee's royalty payments, the lessee and the person must have agreed to an assignment of the obligation to pay royalty, and notice of that assignment or either evidence of or notice of an assignment, and filing a PIF, without more, does not render the person filing it a lessee under sec.3(7) of FOGPMA, 30 U.S.C. § 1702(7) (1988). There must be a document assigning the obligation to make royalty payments or a contract or agreement stating this obligation.

The assignment of the obligation to make royalty payments is not related to an assignment of a lease or an interest in a lease that must be approved by BIA under 25 CFR 212.22.

The making of royalty payments and the filing of PIFs are not sufficient evidence to indicate an intent to be bound as an agent by lessees' obligation to pay royalty.

Mesa Operating Ltd Partnership, 125 IBLA 28 (Dec. 31, 1992) 99 I.D. 272

FEES

(See also Accounts)

It is proper for BLM to reject location notices for placer mining claims submitted for recordation under 43 CFR 3833.1-4(a) because the claimants failed to tender the proper service charge within 30 days from the date claimants were deemed to have constructively received a deficiency notice requiring such payment. The record establishes that the deficiency notice was

FEES--Continued

addressed to and the post office properly attempted delivery to the claimants' last address of record.

Gerhard W. Befeld, Marie D. Befeld, 123 IBLA 118
(May 19, 1992)

GEOPHYSICAL EXPLORATION

GENERALLY

The interim final rule amending 43 CFR Subpart 3150 to make decisions and approvals of the authorized officer in onshore oil and gas geophysical exploration matters effective pending appeal has the effect of making such BLM determinations final agency action immediately subject to judicial review under the provisions of 5 U.S.C. § 704 (1988). While the interim final rule provides that a petition for stay may be filed with the Board of Land Appeals, a person would not be required to exhaust that procedure before proceeding to District Court.

Southern Utah Wilderness Alliance, 123 IBLA 13 (Apr. 22, 1992)

NOTICE OF INTENT

The general regulations governing proceedings before OHA contain a rule, 43 CFR 4.21(a), providing that a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and that the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. The rule specifically provides, however, that it is effective "[e]xcept as otherwise provided by law or other pertinent regulation." An interim final rule, published in the Federal Register on Mar. 13, 1992 (57 FR 9010), 43 CFR 3150.2, provides otherwise by making decisions approving notices

GEOPHYSICAL EXPLORATION--Continued

NOTICE OF INTENT--Continued

of intent to conduct geophysical exploration effective pending appeal.

Southern Utah Wilderness Alliance, 123 IBLA 13 (Apr. 22, 1992)

GEOTHERMAL LEASES

(See also Hearings, Mineral Leasing Act)

CANCELLATION

A geothermal resources lease was properly cancelled where the lessee failed, as required by 43 CFR 3203.5, to notify BLM of performance of required exploration at any time prior to the end of the sixth lease year or within 60 days thereafter. Because the lessee was not given 30 days to correct the violation prior to cancellation, the decision cancelling the lease is reversed and the lessee is allowed 30 days in which to correct the violation, as provided by 43 CFR 3203.5, in order to retain the lease.

George M. Wilkinson, Fidelity Trust Building, Inc., 124 IBLA 171 (Oct. 2, 1992)

GRAZING AND GRAZING LANDS

An ALJ's decision adjudicating grazing privileges will not be set aside on appeal if it correctly determines that a BLM decision reducing grazing is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100.

Glanville Farms, Inc. v. Bureau of Land Management, 122 IBLA 77 (Jan. 14, 1992)

GRAZING AND GRAZING LANDS--Continued

Absent an analysis of the possible consequences should proposed range-land improvement projects not be fully successful and lacking an analysis of the immediate consequences of undertaking the projects, the Board cannot conclude that BLM has identified the relevant areas of environmental concern and has taken a hard look at the environmental consequences of the projects.

Southern Utah Wilderness Alliance, The Wilderness Society, Utah Chapter Sierra Club, 123 IBLA 302
(June 25, 1992)

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

Wayne D. Klump v. Bureau of Land Management, 124 IBLA 176 (Oct. 13, 1992)

Wayne D. Klump v. Bureau of Land Management, 124 IBLA 200 (Oct. 21, 1992)

GRAZING LEASES

(See also Taylor Grazing Act)

GENERALLY

Economic injury to a grazer, even if severe, does not invalidate BLM's decision adjudicating and managing grazing preference, but is only one consideration bearing on the reasonableness of that determination. If BLM's decision has a reasonable basis, it must be affirmed. Although the record demonstrates that BLM's

GRAZING LEASES--Continued

GENERALLY--Continued

decision to divide an allotment into use areas and to assign users to specific use areas works some inconvenience on one grazer and provokes general dissatisfaction among all users assigned to one area, BLM's decision is properly affirmed where the record does not show economic injury so severe as to overcome BLM's valid reasons for imposing that grazing system.

Calvin Yardley et al., L. Wayne Ross v. Bureau of Land Management, 123 IBLA 80 (May 11, 1992)

APPORTIONMENT OF LAND

Economic injury to a grazer, even if severe, does not invalidate BLM's decision adjudicating and managing grazing preference, but is only one consideration bearing on the reasonableness of that determination. If BLM's decision has a reasonable basis, it must be affirmed. Although the record demonstrates that BLM's decision to divide an allotment into use areas and to assign users to specific use areas works some inconvenience on one grazer and provokes general dissatisfaction among all users assigned to one area, BLM's decision is properly affirmed where the record does not show economic injury so severe as to overcome BLM's valid reasons for imposing that grazing system.

Calvin Yardley et al., L. Wayne Ross v. Bureau of Land Management, 123 IBLA 80 (May 11, 1992)

GRAZING PERMITS AND LICENSES

(See also Appeals, Hearings, Taylor Grazing Act)

GENERALLY

It is within the authorized officer's discretionary authority to grant "affected interest" status pursuant to 43 CFR 4100.0-5, for purposes of being involved in grazing management pursuant to the applicable regulations in 43 CFR Part 4100, to a person who has used grazing allotment lands for recreation and filed a written request for affected interest status.

Donald K. Majors, 123 IBLA 142 (May 28, 1992)

ADJUDICATION

An ALJ's decision adjudicating grazing privileges will not be set aside on appeal if it correctly determines that a BLM decision reducing grazing is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100.

Glanville Farms, Inc. v. Bureau of Land Management, 122 IBLA 77 (Jan. 14, 1992)

Where, in the course of analysis and adjudication, a proposal is changed so much that those potentially adversely affected do not have fair notice of its contents, the decision of the ALJ on the proposal will be set aside and the matter remanded so that BLM may issue a new proposed decision based on analysis of the redefined proposal.

Glenn Grenke v. Bureau of Land Management, 122 IBLA 123 (Jan. 24, 1992)

GRAZING PERMITS AND LICENSES--Continued

ADJUDICATION--Continued

BLM enjoys broad discretion in determining how to adjudicate and manage grazing preference. Under 43 CFR 4.478(b), BLM's decision concerning grazing preference may not properly be set aside by an ALJ if it appears that it is reasonable and that it represents a substantial compliance with the provisions of 43 CFR Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supportable "on any rational basis." The burden is on the objecting party to show that a decision is improper.

BLM's decision dividing a grazing allotment into use areas is properly affirmed where (1) range improvement had been found to be necessary after study, (2) the previous system of rest/rotation grazing had failed, (3) it was necessary to restrict use to specific areas to another, and (4) it was necessary to make users accountable for the condition of the range that they were grazing. BLM's decision assigning permittees to specific use areas is properly affirmed where (1) the boundaries were drawn and assignments were made to equalize use of the range, and (2) the boundaries as drawn will equalize the availability of "high country," which provides better feed in late summer.

A determination by BLM of the carrying capacity of a unit of range will not be disturbed in the absence of positive evidence in error. Where appellants presented only testimony expressing their opinion that one area of range has had better feed than another and present no contrary range data assembled by approved methods challenging BLM's methodology such as a range survey, and where their experience on range conditions is not based on BLM's new plan but on existing uncontrolled grazing practices, BLM's determination is properly adopted.

Economic injury to a grazer, even if severe, does not invalidate BLM's decision adjudicating and managing grazing preference, but is only one consideration bearing on the reasonableness of that determination. If BLM's decision has a reasonable basis, it must be affirmed. Although the record demonstrates that BLM's decision to divide an allotment into use areas and to

GRAZING PERMITS AND LICENSES--Continued

ADJUDICATION--Continued

assign users to specific use areas works some inconvenience on one grazer and provokes general dissatisfaction among all users assigned to one area, BLM's decision is properly affirmed where the record does not show economic injury so severe as to overcome BLM's valid reasons for imposing that grazing system.

BLM's attempt to structure a grazing system so that the greatest number of grazers are satisfied does not justify reversal of that decision where it is otherwise supportable.

Calvin Yardley et al., L. Wayne Ross v. Bureau of Land Management, 123 IBLA 80 (May 11, 1992)

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

Wayne D. Klump v. Bureau of Land Management, 124 IBLA 176 (Oct. 13, 1992)

Wayne D. Klump v. Bureau of Land Management, 124 IBLA 200 (Oct. 21, 1992)

GRAZING PERMITS AND LICENSES--Continued

ADMINISTRATIVE LAW JUDGE

BLM enjoys broad discretion in determining how to adjudicate and manage grazing preference. Under 43 CFR 4.478(b), BLM's decision concerning grazing preference may not properly be set aside by an ALJ if it appears that it is reasonable and that it represents a substantial compliance with the provisions of 43 CFR Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supportable "on any rational basis." The burden is on the objecting party to show that a decision is improper.

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A determination by BLM of the carrying capacity of a unit of range will not be disturbed in the absence of positive evidence in error. Where appellants presented only testimony expressing their opinion that one area of range has had better feed than another and present no contrary range data assembled by approved methods challenging BLM's methodology such as a range survey, and where their experience on range conditions is not based on BLM's new plan but on existing uncontrolled grazing practices, BLM's determination is properly adopted.

Economic injury to a grazer, even if severe, does not invalidate BLM's decision adjudicating and managing grazing preference, but is only one consideration bearing on the reasonableness of that determination. If BLM's decision has a reasonable basis, it must be affirmed. Although the record demonstrates that BLM's decision to divide an allotment into use areas and to

GRAZING PERMITS AND LICENSES--Continued

ADMINISTRATIVE LAW JUDGE--Continued

assign users to specific use areas works some inconvenience on one grazer and provokes general dissatisfaction among all users assigned to one area, BLM's decision is properly affirmed where the record does not show economic injury so severe as to overcome BLM's valid reasons for imposing that grazing system.

BLM's attempt to structure a grazing system so that the greatest number of grazers are satisfied does not justify reversal of that decision where it is otherwise supportable.

Calvin Yardley et al., L. Wayne Ross v. Bureau of Land Management, 123 IBLA 80 (May 11, 1992)

APPEALS

An ALJ's decision adjudicating grazing privileges will not be set aside on appeal if it correctly determines that a BLM decision reducing grazing is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100.

Glanville Farms, Inc. v. Bureau of Land Management, 122 IBLA 77 (Jan. 14, 1992)

In order to establish standing to appeal under 43 CFR 4.410, an individual or organization must show that he or she is a party to a case and that a legally cognizable interest has been adversely affected by the appealed decision.

Glenn Grenke v. Bureau of Land Management, 122 IBLA 123 (Jan. 24, 1992)

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

BLM enjoys broad discretion in determining how to adjudicate and manage grazing preference. Under 43 CFR 4.478(b), BLM's decision concerning grazing preference may not properly be set aside by an ALJ if it appears that it is reasonable and that it represents a substantial compliance with the provisions of 43 CFR Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supportable "on any rational basis." The burden is on the objecting party to show that a decision is improper.

BLM's decision dividing a grazing allotment into use areas is properly affirmed where (1) range improvement had been found to be necessary after study, (2) the previous system of rest/rotation grazing had failed, (3) it was necessary to restrict use to specific areas to another, and (4) it was necessary to make users accountable for the condition of the range that they were grazing. BLM's decision assigning permittees to specific use areas is properly affirmed where (1) the boundaries were drawn and assignments were made to equalize use of the range, and (2) the boundaries as drawn will equalize the availability of "high country," which provides better feed in late summer.

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GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

assign users to specific use areas works some inconvenience on one grazer and provokes general dissatisfaction among all users assigned to one area, BLM's decision is properly affirmed where the record does not show economic injury so severe as to overcome BLM's valid reasons for imposing that grazing system.

BLM's attempt to structure a grazing system so that the greatest number of grazers are satisfied does not justify reversal of that decision where it is otherwise supportable.

Calvin Yardley et al., L. Wayne Ross v. Bureau of Land Management, 123 IBLA 80 (May 11, 1992)

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

Wayne D. Klump v. Bureau of Land Management, 124 IBLA 176 (Oct. 13, 1992)

Wayne D. Klump v. Bureau of Land Management, 124 IBLA 200 (Oct. 21, 1992)

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE

A determination by BLM of the carrying capacity of a unit of range will not be disturbed in the absence of positive evidence in error. Where appellants presented only testimony expressing their opinion that one area of range has had better feed than another and present no contrary range data assembled by approved methods challenging BLM's methodology such as a range survey, and where their experience on range conditions is not based on BLM's new plan but on existing uncontrolled grazing practices, BLM's determination is properly adopted.

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BLM's attempt to structure a grazing system so that the greatest number of grazers are satisfied does not justify reversal of that decision where it is otherwise supportable.

Calvin Yardley et al., L. Wayne Ross v. Bureau of Land Management, 123 IBLA 80 (May 11, 1992)

GRAZING PERMITS AND LICENSES--Continued

ASSIGNMENT

Where application is made to BLM for transfer of grazing preference, transfer applications shall evidence assignment of interest and obligation in range improvements. The terms and conditions of the cooperative agreements and range improvement permits are binding on the transferee. 43 CFR 4110.2-3(a)(2).

Glanville Farms, Inc. v. Bureau of Land Management,
122 IBLA 77 (Jan. 14, 1992)

RANGE SURVEYS

A determination by BLM of the carrying capacity of a unit of range will not be disturbed in the absence of positive evidence in error. Where appellants presented only testimony expressing their opinion that one area of range has had better feed than another and present no contrary range data assembled by approved methods challenging BLM's methodology such as a range survey, and where their experience on range conditions is not based on BLM's new plan but on existing uncontrolled grazing practices, BLM's determination is properly adopted.

Calvin Yardley et al., L. Wayne Ross v. Bureau of Land Management, 123 IBLA 80 (May 11, 1992)

TRESPASS

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the

GRAZING PERMITS AND LICENSES--Continued

TRESPASS--Continued

burden is on the objecting party to show that a decision is improper.

Wayne D. Klump v. Bureau of Land Management, 124 IBLA 200 (Oct. 21, 1992)

INDIAN PROBATE

(See also Appeals, Bureau of Indian Affairs, Hearings, Indians, Rules of Practice)

APPEAL (See also PLEADING, RECONSIDERATION)

Generally

The appellant bears the burden of proving the error in the decision from which the appeal is taken.

Estate of Frank (Tate) Nevaquaya Tooahimpah, 21 IBIA 222 (Mar. 4, 1992)

Matters Considered on Appeal

The Board of Indian Appeals is not required to consider evidence presented for the first time on appeal.

Estates of Evan Gillette, Sr., & Lizzie Gillette/Yellow Bird/Bellanger/Paint/Bedell, aka Elizabeth Burdell, 22 IBIA 133 (June 18, 1992)

INDIAN PROBATE--Continued

ATTORNEYS AT LAW

Fees

43 CFR 4.281 does not authorize the award of attorneys fees against an opposing party in an Indian probate proceeding, but only against the party represented or against the estate.

Estates of Evan Gillette, Sr., & Lizzie Gillette/Yellow Bird/Bellanger/Paint/Bedell, aka Elizabeth Burdell,
22 IBIA 133 (June 18, 1992)

CHILDREN, ADOPTED (See also ADOPTION, INHERITING)

Right to Inherit

Generally

Under Oklahoma law, use of the phrase "issue of" or "heirs of the body" evidences an intent to exclude adopted children from a class gift.

Estate of Frank (Tate) Nevaquaya Tooahimpah, 21 IBIA 222
(Mar. 4, 1992)

CHILDREN, ILLEGITIMATE (See also INHERITING)

Right to Inherit

Generally

Under 25 U.S.C. § 371 (1988), an illegitimate Indian child is entitled to inherit trust property through the person shown to be the father.

Estate of Abbie (Effie) Little Eagle Osbourne,
22 IBIA 142 (June 18, 1992)

INDIAN PROBATE--Continued

ESCHEAT

Under 25 U.S.C. § 2206(b) (1988 and Supps.), an Indian testator may devise an interest in trust or restricted property that would otherwise escheat under 25 U.S.C. § 226(a) (1988 and Supps.), to any person who owns an interest in that property.

Estate of Clarence Wilson, 22 IBIA 33 (Apr. 23, 1992)

INDIAN LAND CONSOLIDATION ACT

Escheat

Under sec. 207 of ILCA, 25 U.S.C. § 2206 (1988 and Supps.), the test for whether a small fractional interest in trust or restricted land escheats to the governing Indian tribe is based on the earnings produced by that interest. The Board of Indian Appeals lacks authority to substitute a different test for the one set out in the statute.

Under sec. 207 of ILCA, 25 U.S.C. § 2206 (1988 and Supps.), an interest in trust or restricted land is presumed to escheat to the governing Indian tribe if it represents 2 per centum or less of the total acreage in the land and has earned to its owner less than \$100 in any one of the 5 years before the owner's death. However, the presumption favoring escheat may be rebutted by a showing that the interest is capable of earning \$100 or more in any one of the 5 years following the owner's death.

With respect to any Indian estate in which interests are presumed to escheat under sec. 207 of ILCA, 25 U.S.C. § 2206 (1988 and Supps.), evidence must appear in the probate record showing that (1) the ALJ informed individuals who would otherwise inherit the interests that they have the right to attempt a rebuttal

INDIAN PROBATE--Continued

INDIAN LAND CONSOLIDATION ACT--Continued

Escheat--Continued

of the presumption, and (2) such individuals were provided with an opportunity to exercise their right of rebuttal.

Estate of Guadalupe Almanza Conger, 21 IBIA 244
(Mar. 17, 1992)

With respect to any Indian estate in which interests are presumed to escheat under sec. 207 of ILCA, 25 U.S.C. § 2206 (1988 and Supps.), evidence must appear in the probate record showing that (1) the Administrative Law Judge informed individuals who would otherwise inherit the interests that they have the right to attempt a rebuttal of the presumption and (2) such individuals were provided with an opportunity to exercise their right of rebuttal.

Under 25 U.S.C. § 2206(b) (1988 and Supps.), an Indian testator may devise an interest in trust or restricted property that would otherwise escheat under 25 U.S.C. § 226(a) (1988 and Supps.), to any person who owns an interest in that property.

Estate of Clarence Wilson, 22 IBIA 33 (Apr. 23, 1992)

INVENTORY (See also MODIFICATION OF INVENTORY)

Property Erroneously Excluded or Included

Departmental regulations in 43 CFR Part 4, Subpart D, suffice to allow consideration of alleged legal

INDIAN PROBATE--Continued

INVENTORY (See also MODIFICATION OF INVENTORY)--Continued

Property Erroneously Excluded or Included--Continued

errors in BIA's inventory of Indian trust assets during an Indian probate proceeding.

Estates of Evan Gillette, Sr., & Lizzie Gillette/Yellow Bird/Bellanger/Paint/Bedell, aka Elizabeth Burdell, 22 IBIA 133 (June 18, 1992)

LIFE ESTATES

The construction of Indian wills under the jurisdiction of the Department of the Interior is a question of Federal, not state, law. However, when an Indian testator devises a life estate to a named individual with the remainder interest in the heirs of that individual's body, the remaindermen are determined with reference to state laws of intestate succession.

Estate of Frank (Tate) Nevaquaya Tooahimpah, 21 IBIA 222 (Mar. 4, 1992)

STATE LAW

Applicability to Indian Probate, Intestate Estates

The construction of Indian wills under the jurisdiction of the Department of the Interior is a question of Federal, not state, law. However, when an Indian testator devises a life estate to a named individual with the remainder interest in the heirs of that individual's body, the remaindermen are determined with reference to state laws of intestate succession.

Estate of Frank (Tate) Nevaquaya Tooahimpah, 21 IBIA 222 (Mar. 4, 1992)

INDIAN PROBATE--Continued

STATE LAW--Continued

Applicability to Indian Probate, Testate

The construction of Indian wills under the jurisdiction of the Department of the Interior is a question of Federal, not state, law. However, when an Indian testator devises a life estate to a named individual with the remainder interest in the heirs of that individual's body, the remaindermen are determined with reference to state laws of intestate succession.

Estate of Frank (Tate) Nevaquaya Tooahimpah, 21 IBIA 222
(Mar. 4, 1992)

Pretermitted Heir

In the absence of substantive law or regulations on the issue of pretermitted heirs, the Department of the Interior should give effect to the stated wishes of an Indian testator, as expressed in a valid will, rather than create substantive rules governing pretermisison within the limited context of individual probate cases.

Estate of Lois Marie (Francis) Pete (Sanchez), 22 IBIA
249 (Aug. 28, 1992) 99 I.D. 186

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING)

Anti-lapse_Policy

43 CFR 4.261 should be applied to the lapse of a devise under the residuary clause of an Indian will.

Estate of Frank (Tate) Nevaquaya Tooahimpah, 21 IBIA 222
(Mar. 4, 1992)

Applicability of State Law

The construction of Indian wills under the jurisdiction of the Department of the Interior is a question of Federal, not state, law. However, when an Indian testator devises a life estate to a named individual with the remainder interest in the heirs of that individual's body, the remaindermen are determined with reference to state laws of intestate succession.

Estate of Frank (Tate) Nevaquaya Tooahimpah, 21 IBIA 222
(Mar. 4, 1992)

Construction of

The construction of Indian wills under the jurisdiction of the Department of the Interior is a question of Federal, not state, law. However, when an Indian testator devises a life estate to a named individual with the remainder interest in the heirs of that individual's body, the remaindermen are determined with reference to state laws of intestate succession.

Estate of Frank (Tate) Nevaquaya Tooahimpah, 21 IBIA 222
(Mar. 4, 1992)

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING)
--Continued

Failure to Mention Child

In the absence of substantive law or regulations on the issue of pretermitted heirs, the Department of the Interior should give effect to the stated wishes of an Indian testator, as expressed in a valid will, rather than create substantive rules governing pretermisison within the limited context of individual probate cases.

Estate of Lois Marie (Francis) Pete (Sanchez), 22 IBIA
249 (Aug. 28, 1992) 99 I.D. 186

Failure to Mention Spouse

In the absence of substantive law or regulations on the issue of pretermitted heirs, the Department of the Interior should give effect to the stated wishes of an Indian testator, as expressed in a valid will, rather than create substantive rules governing pretermisison within the limited context of individual probate cases.

Estate of Lois Marie (Francis) Pete (Sanchez), 22 IBIA
249 (Aug. 28, 1992) 99 I.D. 186

Residuary Clause

43 CFR 4.261 should be applied to the lapse of a devise under the residuary clause of an Indian will.

Estate of Frank (Tate) Nevaquaya Tooahimpah, 21 IBIA 222
(Mar. 4, 1992)

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING)
--Continued

Revocation by Subsequent Marriage

In the absence of substantive law or regulations on the issue of pretermitted heirs, the Department of the Interior should give effect to the stated wishes of an Indian testator, as expressed in a valid will, rather than create substantive rules governing pretermitted within the limited context of individual probate cases.

Estate of Lois Marie (Francis) Pete (Sanchez), 22 IBIA
249 (Aug. 28, 1992) 99 I.D. 186

Testamentary Capacity

Generally

The burden of proof as to testamentary incapacity or undue influence in Indian probate proceedings is on those contesting the will.

Estates of Evan Gillette, Sr., & Lizzie Gillette/Yellow
Bird/Bellanger/Paint/Bedell, aka Elizabeth Burdell,
22 IBIA 133 (June 18, 1992)

Undue Influence

The burden of proof as to testamentary incapacity or undue influence in Indian probate proceedings is on those contesting the will.

Estates of Evan Gillette, Sr., & Lizzie Gillette/Yellow
Bird/Bellanger/Paint/Bedell, aka Elizabeth Burdell,
22 IBIA 133 (June 18, 1992)

INDIANS

(See also Board of Indian Appeals, Bureau of Indian Affairs, Indian Probate)

GENERALLY

The Board of Indian Appeals is not required to consider issues and arguments that are raised for the first time on appeal.

All Materials of Montana, Inc. v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 202 (Feb. 27, 1992)

Joint Board of Control for the Flathead, Mission, & Jocko Irrigation Districts v. Acting Portland Area Director, Bureau of Indian Appeals, 22 IBIA 22 (Apr. 13, 1992)

In a case where the interests of an Indian tribe are arguably in conflict with the interests of some members of the tribe, the Board of Indian Appeals declines to invoke the canon regarding construction of statutory ambiguities in favor of Indians.

Where a statute concerning Indians manifests two competing purposes, an expansive reading of the statute should be avoided if that reading would disserve one of the two purposes.

State of Utah, Board of Indian Affairs & Division of Indian Affairs v. Navajo Area Director, Bureau of Indian Affairs, 21 IBIA 282 (Mar. 31, 1992) 99 I.D. 39

In order to correct prior error, an official of the BIA may change an administrative interpretation of a statute as long as the reason for the change is clearly

INDIANS--Continued

GENERALLY--Continued

set forth to show that the departure from the prior administrative position is not arbitrary or capricious.

Hopi Indian Tribe v. Director, Office of Trust & Economic Development, Bureau of Indian Affairs,
22 IBIA 10 (Apr. 7, 1992)

Unless otherwise specified, a decision of the Board of Indian Appeals remanding a matter to an official of the BIA restores that official's full authority to consider the matter.

Stone Trucking v. Portland Area Director, Bureau of Indian Affairs, 22 IBIA 52 (May 5, 1992)

A Federal agency has a responsibility to explain the rationale and factual basis for decisions affecting persons dealing with the agency. Failure to provide such information is a violation of due process.

Ouileute Tribe v. Portland Area Director, Bureau of Indian Affairs, 23 IBIA 20 (Oct. 29, 1992)

Where the Montana State Historic Preservation Office is aware that an area may possess traditional cultural values, owing to the presence of Native American fasting and vision questing sites there, but nevertheless concludes that no properties eligible for inclusion on the National Register of Historic Places were identified in the area, BLM is not required to comply with sec. 106 of the National Historic Preservation Act. Rather, it is adequate for BLM to address effects of gold mining on cultural values through its compliance with the American Indian Religious Freedom Act. BLM complies with the latter Act where it actively solicits the opinions of Native Americans, both

INDIANS--Continued

GENERALLY--Continued

individually and in tribal groups, and considers reasonable mitigating measures.

Red Thunder, Inc., et al., 124 IBLA 267 (Nov. 3, 1992)

ALASKA NATIVES

Reindeer

The Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), was not repealed by the Alaska Statehood Act, 72 Stat. 339.

The legislative history of the Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), makes it clear that Congress intended to reserve the reindeer industry in Alaska for the exclusive benefit of Alaska Natives.

Courts commonly give deference to the construction of a statute by the agency charged with its administration, particularly one which was contemporaneous with the statute and has been consistently followed by the agency.

Ambiguities in the Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), must be construed in favor of the Alaska Natives who are the intended beneficiaries of the Act.

In a case where the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters, the intention of the drafters, rather than the strict language, controls.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

INDIANS--Continued

CIVIL RIGHTS

Indian Civil Rights Act of 1968

In discharging its government-to-government relationship with an Indian tribe, BIA has the authority and the responsibility to decline to recognize the results of a tribal election when it finds that a violation of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988), has tainted the election results.

Because of the possibility of abuse of power by a group of individuals temporarily in office, tribal legislation disenrolling certain tribal members must meet the standards established by the tribe's constitution or other governing documents. Since the passage of the Indian Civil Rights Act, 15 U.S.C. § 1302 (1988), these standards have included the matters covered by the Act.

United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, & Joe Grayson, Jr., & Pam Thurman Jumper, Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 75 (June 4, 1992)

A tribal action which deprives an individual of procedural rights set out in the tribal constitution violates the due process requirement of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988).

In discharging its government-to-government relationship with an Indian tribe, BIA has the authority and the responsibility to decline to recognize a removal of tribal officials when the removal action was tainted by a violation of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988).

James C. Greendeer v. Minneapolis Area Director, Bureau of Indian Affairs, 22 IBIA 91 (June 10, 1992)

INDIANS--Continued

CIVIL RIGHTS--Continued

Indian Civil Rights Act of 1968--Continued

In discharging its government-to-government relationship with an Indian tribe, the BIA has the authority and the responsibility to decline to recognize the results of a tribal election when it finds that a violation of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988), has tainted the election results.

Neddeen Naylor, Mary L. Wuester, Irene Button, & Noreen E. Sellberg v. Sacramento Area Director, Bureau of Indian Affairs, 23 IBIA 76 (Nov. 13, 1992)

ENROLLMENT/TRIBAL MEMBERSHIP

Because of the possibility of abuse of power by a group of individuals temporarily in office, tribal legislation disenrolling certain tribal members must meet the standards established by the tribe's constitution or other governing documents. Since the passage of the Indian Civil Rights Act, 15 U.S.C. § 1302 (1988), these standards have included the matters covered by the Act.

United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, & Joe Grayson, Jr., & Pam Thurman Jumper, Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 75 (June 4, 1992)

INDIANS--Continued

FINANCIAL MATTERS

Financial Assistance

Lease income from trust lands is not specifically excluded by Federal statute from consideration as a resource available to meet an individual Indian's need within the meaning of 25 CFR 20.21, which governs the general assistance program of the BIA.

Diedre Wilson v. Acting Portland Area Director, Bureau of Indian Affairs, 21 IBIA 188 (Feb. 14, 1992)

Decisions concerning whether a tribe's application for a Technical Assistance grant should be funded are committed to the discretion of the BIA. It is not the function of the Board of Indian Appeals, in reviewing such decisions, to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

The Board of Indian Appeals has jurisdiction to review an allegation that raises questions as to whether the BIA followed its own guidelines for a financial assistance program.

It is improper for the BIA to deny an application for financial assistance for reasons that are in conflict with the guidelines for the program under which assistance was sought.

Oneida Indian Nation v. Deputy Comm'r of Indian Affairs, 21 IBIA 215 (Feb. 28, 1992)

INDIANS--Continued

FINANCIAL MATTERS--Continued

Financial Assistance--Continued

When the BIA denies an application for a U.S. Direct Loan, the administrative record and the decision, when read together, must show how the Bureau reached its conclusions.

Charles McCloud v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 21 IBIA 254 (Mar. 18, 1992)

When an official of BIA determines that an application for financial assistance under the Indian Financing Act should be disapproved, the issuance of a preliminary determination to that effect, allowing the applicant an opportunity to respond, could significantly expedite final resolution of the matter by allowing the applicant to address the official's concerns before initiation of the appeal process.

Nockey Construction, Inc. v. Portland Area Director, Bureau of Indian Affairs, 22 IBIA 38 (May 1, 1992)

It is improper for BIA to deny an application for financial assistance for reasons that were not set forth in the announcement of the program under which assistance was sought.

Tunica-Biloxi Tribe v. Deputy Comm'r of Indian Affairs, 22 IBIA 43 (May 4, 1992)

25 CFR Part 286, dealing with the Indian Business Development Program, does not require that a customary lender be a lending institution qualified under the guaranteed loan program in 25 CFR Part 103.

Even if a grant application under the Indian Business Development Program is found to be eligible for funding, it is a proper exercise of the discretion

INDIANS--Continued

FINANCIAL MATTERS--Continued

Financial Assistance--Continued

granted to the BIA to find that other applications have higher priority under 25 CFR 286.8. Support for this conclusion must, however, appear in the administrative record.

Stone Trucking v. Portland Area Director, Bureau of Indian Affairs, 22 IBIA 52 (May 5, 1992)

Under 25 CFR 20.21(e)(1), the payment standard for general assistance from BIA is based on the payment standard for the Aid to Families with Dependent Children program in the state where the applicant or recipient resides.

Under 25 CFR 20.23, BIA is not required to provide miscellaneous financial assistance to applicants who have other resources available to meet current living costs.

Pat Hayes v. Acting Anadarko Area Director, BIA, 22 IBIA 65 (June 3, 1992)

Where subsequent legislation renders questionable the continued validity of a BIA regulation, the Board of Indian Appeals will not apply the regulation to the detriment of a party dealing with the Bureau.

Under 25 U.S.C. § 1493 (1988), BIA may not decline to honor an already-approved loan guaranty on the grounds of lender imprudence. However, under 25 U.S.C. § 1491 (1988), the Bureau may raise certain defenses against a claim under the guaranty.

INDIANS--Continued

FINANCIAL MATTERS--Continued

Financial Assistance--Continued

Under BIA's loan guaranty program, the failure of a lender to maintain effective liens will diminish the amount of the guaranty to the extent of any loss caused by the lender's failure. 25 CFR 103.28(b).

Arguable BIA imprudence in approving a loan guaranty does not relieve the lender of its obligations under the loan guaranty regulations and agreement.

The Guardian Life Insurance Co. of America & Public Leasing Corp. v. Acting Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 104 (June 11, 1992)

Decisions concerning whether a request for a loan guaranty under the Indian Loan Guaranty and Insurance Program should be approved are committed to the discretion of BIA. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of is erroneous or not supported by substantial evidence.

Although regulations in 25 CFR Part 103, governing the Indian Loan Guaranty and Insurance Program, require that an economic enterprise be at least 51 percent Indian-owned in order to be eligible for a loan guaranty, they do not specifically require that the economic enterprise be Indian-controlled.

The regulations in 25 CFR Part 103, governing the Indian Loan Guaranty and Insurance Program, require that

INDIANS--Continued

FINANCIAL MATTERS--Continued

Financial Assistance--Continued

an economic enterprise seeking a loan guaranty must contribute beneficially to the economy of an Indian reservation.

Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, Bureau of Indian Affairs, 22 IBIA 153 (June 26, 1992)

A Federal agency has a responsibility to explain the rationale and factual basis for decisions affecting persons dealing with the agency. Failure to provide such information is a violation of due process.

Ouileute Tribe v. Portland Area Director, Bureau of Indian Affairs, 23 IBIA 20 (Oct. 29, 1992)

HOUSING

Generally

Where a lease of Indian land provides that it may not be cancelled absent the consent of HUD unless HUD's interest has been terminated, a BIA Superintendent may not approve cancellation of the lease without either evidence of HUD's consent or participation by HUD in a determination concerning termination of its interest.

Comanche Housing Authority & Chloveta A. Caudill v. Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 271 (Sept. 9, 1992)

INDIANS--Continued

HOUSING--Continued

Housing Improvement Program

Although the BIA normally would be bound by the terms of a Housing Improvement Program grant agreement it had signed, it may be excused from performance in a case where performance is impossible.

Mildred Hartman v. Anadarko Area Director, Bureau of Indian Affairs, 23 IBIA 122 (Dec. 18, 1992)

INDIAN SELF-DETERMINATION AND EDUCATION
ASSISTANCE ACT

Generally

A decision distributing funds among several tribes, for purposes of contracting under the Indian Self-Determination Act, is a decision based on the exercise of discretion. In reviewing such decisions, the Board of Indian Appeals does not substitute its judgment for that of the Bureau but, rather, seeks to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

Ponca Tribe of Oklahoma, Pawnee Tribe of Oklahoma, & Otoe-Missouria Tribe v. Acting Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 199 (Aug. 7, 1992)

Under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450f(b)(3) (1988), whenever the Secretary declines to enter into a self-determination contract, he must provide the tribal organization with a hearing on the record. A BLM decision declining a self-determination contract application will be set aside if BLM has not afforded the tribe an

INDIANS--Continued

INDIAN SELF-DETERMINATION AND EDUCATION
ASSISTANCE ACT--Continued

Generally--Continued

opportunity for a hearing, and the case will be assigned to an ALJ to conduct the statutorily mandated hearing. The record of the hearing shall then be forwarded to the Director, BLM, for review and issuance of a decision with appeal rights to the Ass't Secretary, Land and Minerals Management.

Absentee Shawnee Tribe of Oklahoma, 124 IBLA 259
(Nov. 3, 1992)

LANDS

Generally

Lease income from trust lands is not specifically excluded by Federal statute from consideration as a resource available to meet an individual Indian's need within the meaning of 25 CFR 20.21, which governs the general assistance program of the BIA.

Diedre Wilson v. Acting Portland Area Director, Bureau of Indian Affairs, 21 IBIA 188 (Feb. 14, 1992)

The Board of Indian Appeals is not a court of general jurisdiction. It has only that authority which has been delegated to it by the Secretary of the Interior. It has not been delegated authority to determine whether title to land is properly in the United States in trust for an Indian tribe or individual as opposed to being in fee ownership.

It is the responsibility of the BIA to take action against a person shown by state and Federal land title

INDIANS--Continued

LANDS--Continued

Generally--Continued

records to be in trespass on land held by the United States in trust for an Indian tribe.

Phil Foutz v. Acting Navajo Area Director, Bureau of Indian Affairs, 21 IBIA 273 (Mar. 27, 1992)

Allotments

Alienation

In determining whether to approve a gift deed of Indian trust land, the BIA's trust duty requires it to refrain from approving the deed if there is any question as to the Indian landowner's intent.

Estates of Evan Gillette, Sr., & Lizzie Gillette/Yellow Bird/Bellanger/Paint/Bedell, aka Elizabeth Burdell, 22 IBIA 133 (June 18, 1992)

Ceded Lands

Restoration

Issuance of patent under the Color of Title Act, as amended, 43 U.S.C. §§ 1068-1068b (1988), is not warranted if the land was restored to tribal ownership prior to when the color-of-title claimant's chain of title was initiated.

Estate of Edna Turney, 123 IBLA 354 (July 20, 1992)

INDIANS--Continued

LANDS--Continued

Fair_Rental_Value

The role of the Board of Indian Appeals in reviewing a BIA determination of fair rental value is to determine whether the decision is reasonable, that is, whether it is supported by law and substantial evidence.

An appellant who challenges a BIA rental adjustment for a lease of Indian land bears the burden of proving that the adjustment is unreasonable.

A determination of fair annual rental for a lease of Indian land should be made in accordance with generally accepted appraisal principles.

John Strain v. Portland Area Director, Bureau of Indian Affairs et al., 23 IBIA 114 (Dec. 18, 1992)

Individual_Trust_or_Restricted_Land

Generally

Under 25 CFR 162.2(a)(4), the BIA may grant leases of individually owned trust or restricted land when the heirs or devisees have not been able to agree upon a lease during the 3-month period immediately following the date on which a lease may be entered into.

Peace Pipe, Inc. v. Acting Muskogee Area Director, Bureau of Indian Affairs, 22 IBLA 1 (Apr. 2, 1992)

INDIANS--Continued

LANDS--Continued

Trespass

Generally

It is the responsibility of the BIA to take action against a person shown by state and Federal land title records to be in trespass on land held by the United States in trust for an Indian tribe.

Phil Foutz v. Acting Navajo Area Director, Bureau of Indian Affairs, 21 IBIA 273 (Mar. 27, 1992)

Damages

Under 25 CFR 166.24(b), a BIA Superintendent is required to take action to collect penalties and damages from the owner of cattle grazing in trespass upon trust or restricted Indian lands. However, it is within the Superintendent's discretion to determine whether or not a lessee should receive any of the damages.

Tim Kimmet v. Billings Area Director, Bureau of Indian Affairs, 22 IBIA 148 (June 25, 1992)

Tribal Lands

Under 25 CFR 162.3, an Indian tribe has the authority to grant leases of tribally owned lands.

Thor K. Lande v. Acting Billings Area Director, Bureau of Indian Affairs, 22 IBIA 188 (July 22, 1992)

INDIANS--Continued

LANDS--Continued

Trust Acquisitions

The approval of requests to acquire land in trust status for an Indian tribe or individual is committed to the discretion of the BIA. It is not the function of the Board of Indian Appeals, in reviewing such decisions, to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

When a challenge is raised to a discretionary decision issued by a BIA official under 25 CFR Chapter I, the appellant bears the burden of showing that the official did not properly exercise discretion.

John Ross, Jr. v. Acting Muskogee Area Director, Bureau of Indian Affairs, 21 IBIA 251 (Mar. 18, 1992)

The Board of Indian Appeals lacks jurisdiction to review decisions rendered by the Assistant Secretary--Indian Affairs except when those decisions are specifically referred to it by the Secretary or the Assistant Secretary, or when a right of review is established in regulations.

State of South Dakota & Town of Oacoma v. Aberdeen Area Director, Bureau of Indian Affairs, 22 IBIA 126 (June 12, 1992)

When Congress enacts legislation providing for the trust acquisition of land for an Indian tribe, it should be deemed to intend that the normal title standards for trust acquisitions will apply unless it provides otherwise in the statute.

Tohono O'Odham Nation v. Acting Phoenix Area Director, Bureau of Indian Affairs, 22 IBIA 220 (Aug. 14, 1992)

INDIANS--Continued

LAW AND ORDER

Civil Jurisdiction

The BIA does not have the authority or responsibility to enforce a tribal court order. That authority and responsibility resides with the tribal court.

Sherry Camel v. Ass't Portland Area Director, Bureau of Indian Affairs, 21 IBIA 179 (Feb. 10, 1992)

LEASES AND PERMITS

Generally

Decisions concerning whether or not to grant a lease of trust or restricted land are committed to the discretion of the BIA. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

The owner of an interest in individually owned Indian land may withdraw his/her consent to a lease at any time prior to the approval of the lease by the BIA.

Darrell Rathkamp v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 144 (Jan. 5, 1992)

All persons dealing with the Federal Government are presumed to have knowledge of duly promulgated regulations.

All Materials of Montana, Inc. v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 202 (Feb. 27, 1992)

INDIANS--Continued

LEASES AND PERMITS--Continued

Generally--Continued

In determining whether an instrument is a tribal lease for purposes of a particular Federal statute, the critical inquiry is whether it has the characteristics Congress had in mind when employing the term "tribal lease" in the statute.

State of Utah, Board of Indian Affairs & Division of Indian Affairs v. Navajo Area Director, Bureau of Indian Affairs, 21 IBIA 282 (Mar. 31, 1992) 99 I.D. 39

Under 25 CFR 162.3, an Indian tribe has the authority to grant leases of tribally owned lands.

When an official of BIA has reason to question a tribal decision which requires action by the Bureau, such as the leasing of tribal trust land, he or she should make the question known to the proper tribal official or forum and ask for clarification of the tribal position.

Thor K. Lande v. Acting Billings Area Director, Bureau of Indian Affairs, 22 IBIA 188 (July 22, 1992)

A lessee of Indian trust or restricted property has a duty and responsibility to familiarize itself with the regulations governing its lease.

Craig McGriff Exploration, Inc. v. Acting Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 265 (Sept. 8, 1992)

INDIANS--Continued

LEASES AND PERMITS--Continued

Generally--Continued

BIA is bound by the terms of leases it has approved, when the leases are not in conflict with governing regulations.

Comanche Housing Authority & Chloveta A. Caudill v. Anadarko Area Director, Bureau of Indian Affairs,
22 IBIA 271 (Sept. 9, 1992)

Assignments

The assignment of the obligation to make royalty payments is not related to an assignment of a lease or an interest in a lease that must be approved by BIA under 25 CFR 212.22.

Mesa Operating Ltd Partnership, 125 IBLA 28 (Dec. 31, 1992) 99 I.D.272

Cancellation_or Revocation

Due process does not require that an evidentiary hearing be provided prior to cancellation of a lease of Indian land.

All Materials of Montana, Inc. v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 202 (Feb. 27, 1992)

INDIANS--Continued

LEASES AND PERMITS--Continued

Cancellation or Revocation--Continued

The failure to make timely rental payments for leased Indian trust or restricted property constitutes a breach of contract for which the lease may be cancelled.

When BIA believes that, because of a decision regarding a lease of trust or restricted property, immediate action is necessary to protect trust resources or to mitigate damages that might accrue against the lessee of that property, the best practice would be for the official to whom an appeal is taken, or to whom an appeal could be taken, to place the decision into immediate effect pursuant to 25 CFR 2.6(a).

The fact that prior breaches of a lease of Indian trust or restricted land have been forgiven after the lessee cured the breaches does not create a right in the lessee to breach the lease in the future with impunity, nor does it deprive the Indian landowners of rights they have under the lease.

Doyle French v. Aberdeen Area Office, Bureau of Indian Affairs, 22 IBIA 211 (Aug. 11, 1992)

Where a valid sublease of trust land has been made, the parties to the main lease may not defeat the rights of the sublessee by a voluntary cancellation of the lease to which the sublessee has not consented.

Where a lease of Indian land provides that it may not be cancelled absent the consent of HUD unless HUD's interest has been terminated, a BIA Superintendent may not approve cancellation of the lease without either evidence of HUD's consent or participation by HUD in a determination concerning termination of its interest.

Comanche Housing Authority & Chloveta A. Caudill v. Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 271 (Sept. 9, 1992)

INDIANS--Continued

LEASES AND PERMITS--Continued

Cancellation_or Revocation--Continued

When a lessee of Indian land has been given ample opportunity to cure a breach of his lease and has failed to do so, despite notice given pursuant to the cancellation procedures in the lease, the BIA may cancel the lease.

Tiger Outdoor Advertising, Inc. v. Eastern Area Director, Bureau of Indian Affairs, 22 IBIA 280 (Sept. 9, 1992)

Farming and Grazing

BIA has authority to allocate grazing privileges on Indian land in accordance with a tribal allocation program.

Hugh E. Monroe v. Acting Billings Area Director, Bureau of Indian Affairs, 21 IBIA 266 (Mar. 25, 1992)

Under 25 CFR 166.24(b), a BIA Superintendent is required to take action to collect penalties and damages from the owner of cattle grazing in trespass upon trust or restricted Indian lands. However, it is within the Superintendent's discretion to determine whether or not a lessee should receive any of the damages.

Tim Kimmet v. Billings Area Director, Bureau of Indian Affairs, 22 IBIA 148 (June 25, 1992)

INDIANS--Continued

LEASES AND PERMITS--Continued

Farming and Grazing--Continued

25 CFR 166.4 provides that tribal law may supersede BIA grazing regulations under certain circumstances.

Where a grazing permit covers trust land in multiple ownership, the BIA must take the interests of all Indian landowners into consideration when determining whether or not to evoke the permit for cause.

Cheyenne River Sioux Tribe v. Aberdeen Area Director, Bureau of Indian Affairs, 23 IBIA 103 (Dec. 14, 1992)

Rental Rates

The role of the Board of Indian Appeals in reviewing a BIA determination of fair rental value is to determine whether the decision is reasonable, that is, whether it is supported by law and substantial evidence.

An appellant who challenges a BIA rental adjustment for a lease of Indian land bears the burden of proving that the adjustment is unreasonable.

A determination of fair annual rental for a lease of Indian land should be made in accordance with generally accepted appraisal principles.

John Strain v. Portland Area Director, Bureau of Indian Affairs et al., 23 IBIA 114 (Dec. 18, 1992)

INDIANS--Continued

LEASES AND PERMITS--Continued

Secretarial Approval

The owner of an interest in individually owned Indian land may withdraw his/her consent to a lease at any time prior to the approval of the lease by the BIA.

When the BIA obtains knowledge that there were improprieties in the execution of a negotiated lease of trust or restricted land, it has a duty to investigate the matter. This duty is inherent in and the essence of the Secretary's trust responsibility to approve such leases.

Darrell Rathkamp v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 144 (Jan. 9, 1992)

Under 25 CFR 162.2(a)(4), the BIA may grant leases of individually owned trust or restricted land when the heirs or devisees have not been able to agree upon a lease during the 3-month period immediately following the date on which a lease may be entered into.

Peace Pipe, Inc. v. Acting Muskogee Area Director, Bureau of Indian Affairs, 22 IBLA 1 (Apr. 2, 1992)

Subleases

Where a valid sublease of trust land has been made, the parties to the main lease may not defeat the rights of the sublessee by a voluntary cancellation of the lease to which the sublessee has not consented.

Comanche Housing Authority & Chloveta A. Caudill v. Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 271 (Sept. 9, 1992)

INDIANS--Continued

LEASES AND PERMITS--Continued

Violation/Breach

Generally

The failure to make timely rental payments for leased Indian trust or restricted property constitutes a breach of contract for which the lease may be cancelled.

Doyle French v. Aberdeen Area Office, Bureau of Indian Affairs, 22 IBIA 211 (Aug. 11, 1992)

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of is erroneous or not supported by substantial evidence.

Maurice & Brian Schwan v. Aberdeen Area Director, Bureau of Indian Affairs, 23 IBIA 10 (Oct. 29, 1992)

Damages

When BIA believes that, because of a decision regarding a lease of trust or restricted property, immediate action is necessary to protect trust resources or to mitigate damages that might accrue against the lessee of that property, the best practice would be for the official to whom an appeal is taken, or to whom an appeal could be taken, to place the decision into immediate effect pursuant to 25 CFR 2.6(a).

Doyle French v. Aberdeen Area Office, Bureau of Indian Affairs, 22 IBIA 211 (Aug. 11, 1992)

INDIANS--Continued

MINERAL RESOURCES

Mining

Allotted Lands

The assignment of the obligation to make royalty payments is not related to an assignment of a lease or an interest in a lease that must be approved by BIA under 25 CFR 212.22.

Mesa Operating Ltd Partnership, 125 IBLA 28 (Dec. 31, 1992) 99 I.D. 272

Oil and Gas

Generally

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

As a general rule, reasonable value for the purpose of calculating royalties due to the United States will be the highest price paid for the major portion of like quality products produced or sold from the same field or area or the gross proceeds actually received by the lessee, whichever is greater. When the lessee fails to receive the posted upper-tier price for the new oil produced from its leases because that oil was not timely certified as upper-tier oil, royalties based on the posted upper-tier price are due, notwithstanding the lessee's assertions that it did not have sufficient information to know the percentage of new oil subject to the upper-tier price; that it could not control the certification filing procedures that would have enabled it to obtain the upper-tier price; that it relied on the unit operator to fulfill its responsibilities in this regard; and that it diligently pursued litigation against the unit operator to recover the upper-tier

INDIANS--Continued

MINERAL RESOURCES--Continued

Oil and Gas--Continued

Generally--Continued

price which litigation was ultimately settled for far less than the posted price of the upper-tier oil.

Anadarko Petroleum Corp., 122 IBLA 141 (Feb. 3, 1992)

A Federal oil and gas lessee is under an obligation to assume the expenses of placing any gas produced and sold into "marketable condition." No deduction from royalty is allowed for the expenses of gathering and compressing gas required to place it in marketable condition regardless of whether these costs are paid directly by the lessee or by a third party. The price of gas sold at the wellhead which has been reduced from the price of gas in marketable condition by the costs of gathering the gas and compressing it as required for marketing to a pipeline purchaser does not establish the value of the gas in marketable condition.

R. E. Yarbrough & Co., 122 IBLA 217 (Feb. 21, 1992)

Assessments for the late reporting of royalties pursuant to 30 CFR 218.40 are properly distinguished from penalties assessed under sec. 109 of FOGRMA, 30 U.S.C. § 1719 (1988), and do not effectively increase the royalty rate designated in an oil and gas lease.

An assessment of \$10 per report for the late reporting of royalty on production pursuant to 30 CFR 218.40 will be affirmed where 30 CFR 210.52 requires the filing of a completed Form MMS-2014 by the end of the month following the production month and it appears from the record that the reports were filed late.

Linmar Petroleum Co., 123 IBLA 45 (May 6, 1992)

INDIANS--Continued

MINERAL RESOURCES--Continued

Oil and Gas--Continued

Royalties

Under 30 U.S.C. § 1714 (1988), the Department of the Interior lacks authority to escrow oil and gas royalties derived from production on Indian lands, or allocated thereto, beyond the last business day of the month in which they were received.

Cherokee Nation of Oklahoma, Chickasaw Nation, & Choctaw Nation of Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 240 (Aug. 24, 1992)

MMS properly required a Federal and Indian oil and gas lessee to review royalty accounts in order to determine whether royalty underpayment was caused by exclusion of state tax reimbursements from gross proceeds of sales of oil and gas.

The Federal and Indian lessee was properly required to compute and pay additional royalties where there was evidence of systematic exclusion of tax reimbursements in reporting production proceeds for royalty purposes.

BHP Petroleum (Americas) Inc., 124 IBLA 185 (Oct. 14, 1992)

Tribal Lands

In a case where the interests of an Indian tribe are arguably in conflict with the interests of some members of the tribe, the Board of Indian Appeals declines to invoke the canon regarding construction of statutory ambiguities in favor of Indians.

Where a statute concerning Indians manifests two competing purposes, an expansive reading of the statute

INDIANS--Continued

MINERAL RESOURCES--Continued

Oil and Gas--Continued

Tribal Lands--Continued

should be avoided if that reading would disserve one of the two purposes.

By analogy to the canon that a state may tax Indians only when congressional consent to such taxation is unmistakably clear, the Board of Indian Appeals finds that a state may share in the oil and gas royalties from tribal property only when Congress has given its unequivocal consent.

In determining whether an instrument is a tribal lease for purposes of a particular Federal statute, the critical inquiry is whether it has the characteristics Congress had in mind when employing the term "tribal lease" in the statute.

State of Utah, Board of Indian Affairs & Division of Indian Affairs v. Navajo Area Director, Bureau of Indian Affairs, 21 IBIA 282 (Mar. 31, 1992) 99 I.D. 39

SOCIAL SERVICES

Under 25 CFR 20.21(e)(1), the payment standard for general assistance from BIA is based on the payment standard for the Aid to Families with Dependent Children program in the state where the applicant or recipient resides.

Under 25 CFR 20.23, BIA is not required to provide miscellaneous financial assistance to applicants who have other resources available to meet current living costs.

Pat Hayes v. Acting Anadarko Area Director, BIA, 22 IBIA 65 (June 3, 1992)

INDIANS--Continued

TAXATION

By analogy to the canon that a state may tax Indians only when congressional consent to such taxation is unmistakably clear, the Board of Indian Appeals finds that a state may share in the oil and gas royalties from tribal property only when Congress has given its unequivocal consent.

State of Utah, Board of Indian Affairs & Division of Indian Affairs v. Navajo Area Director, Bureau of Indian Affairs, 21 IBIA 282 (Mar. 31, 1992) 99 I.D. 39

The distinction between a real property tax and a special assessment is that a tax is levied against all similarly situated property for purposes which will benefit the public generally and a special assessment is levied only against the specific property which benefits from the improvement financed by the assessment.

In determining whether charges imposed by an irrigation district are real property taxes for purposes of a particular Federal statute, the critical inquiry is whether such charges have the characteristics Congress had in mind in employing the term "real property taxes" in the statute.

Tohono O'Odham Nation v. Acting Phoenix Area Director, Bureau of Indian Affairs, 22 IBIA 220 (Aug. 14, 1992)

TIMBER RESOURCES

Generally

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action

INDIANS--Continued

TIMBER RESOURCES--Continued

Generally--Continued

complained of is erroneous or not supported by substantial evidence.

All Materials of Montana, Inc. v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 202 (Feb. 27, 1992)

TRIBAL GOVERNMENT

Constitutions, Bylaws, and Ordinances

The BIA properly disapproves a tribal ordinance found to be in conflict with Federal law.

White Mountain Apache Tribe v. Acting Phoenix Area Director, Bureau of Indian Affairs, 21 IBIA 151 (Jan. 9, 1992)

In furthering the doctrines of tribal sovereignty and self-determination, the Department of the Interior has recognized their right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

Article X of the Constitution of the Seneca-Cayuga Tribe of Oklahoma gives the Grievance Committee the power to investigate complaints of misconduct or other acts by the Business Committee, and call a special meeting of the Seneca-Cayuga Council to act upon such complaints if a proper showing is made.

Henry P. Rhatigan v. Muskogee Area Director, Bureau of Indian Affairs, 21 IBIA 258 (Mar. 20, 1992)

INDIANS--Continued

TRIBAL GOVERNMENT--Continued

Constitutions, Bylaws, and Ordinances--Continued

In furthering the doctrines of tribal sovereignty and self-determination, DOI has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's interpretation of its own laws.

When neither tribal sovereignty nor tribal historical values are at issue, review of a tribal ordinance by BIA and the Board of Indian Appeals in order to discharge the government-to-government relationship does not substantially interfere with the tribe's ability to maintain itself as a culturally and politically distinct entity.

In discharging its government-to-government relationship with an Indian tribe, BIA has the authority and the responsibility to decline to recognize the results of a tribal election when it finds that a violation of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988), has tainted the election results.

Because of the possibility of abuse of power by a group of individuals temporarily in office, tribal legislation disenrolling certain tribal members must meet the standards established by the tribe's constitution or other governing documents. Since the passage of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988), these standards have included the matters covered by the Act.

United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, & Joe Grayson, Jr., & Pam Thurman Jumper, Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 75 (June 4, 1992)

INDIANS--Continued

TRIBAL GOVERNMENT--Continued

Constitutions, Bylaws, and Ordinances--Continued

In furthering the doctrines of tribal sovereignty and self-determination, DOI has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

A tribal action which deprives an individual of procedural rights set out in the tribal constitution violates the due process requirement of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988).

James C. Greendeer v. Minneapolis Area Director, Bureau of Indian Affairs, 22 IBIA 91 (June 10, 1992)

The Board of Indian Appeals undertakes to interpret tribal law only where there is a clear necessity for it to do so. It therefore does not consider moot issues where, in order to render a decision on the merits, it would be required to interpret tribal law.

In accordance with the Federal policy of fostering tribal self-determination, which counsels respect for the right of tribes to interpret their own governing documents, BIA should avoid interpreting a tribal constitution unless there is a clear necessity for it to do so.

Parmenton Decorah et al. v. Minneapolis Area Director, Bureau of Indian Affairs, 22 IBIA 98 (June 10, 1992)

INDIANS--Continued

TRIBAL GOVERNMENT--Continued

Constitutions, Bylaws, and Ordinances--Continued

In furthering the doctrines of tribal sovereignty and self-determination, DOI has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

Pinoleville Indian Community Governing Council v. Sacramento Area Director, Bureau of Indian Affairs, 22 IBIA 176 (July 16, 1992)

Elections

In discharging its government-to-government relationship with an Indian tribe, BIA has the authority and the responsibility to decline to recognize the results of a tribal election when it finds that a violation of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988), has tainted the election results.

United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, & Joe Grayson, Jr., & Pam Thurman Jumper, Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 75 (June 4, 1992)

In discharging its government-to-government relationship with an Indian tribe, the BIA has the authority and the responsibility to decline to recognize the results of a tribal election when it finds that a

INDIANS--Continued

TRIBAL GOVERNMENT--Continued

Elections--Continued

violation of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988), has tainted the election results.

Neddeen Naylor, Mary L. Wuester, Irene Button, & Noreen E. Sellberg v. Sacramento Area Director, Bureau of Indian Affairs, 23 IBIA 76 (Nov. 13, 1992)

Officers

In discharging its government-to-government relationship with an Indian tribe, BIA has the authority and the responsibility to decline to recognize a removal of tribal officials when the removal action was tainted by a violation of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988).

James C. Greendeer v. Minneapolis Area Director, Bureau of Indian Affairs, 22 IBIA 91 (June 10, 1992)

TRIBAL POWERS

Generally

When an official of BIA has reason to question a tribal decision which requires action by the Bureau, such as the leasing of tribal trust land, he or she should make the question known to the proper tribal official or forum and ask for clarification of the tribal position.

Thor K. Lande v. Acting Billings Area Director, Bureau of Indian Affairs, 22 IBIA 188 (July 22, 1992)

INDIANS--Continued

TRIBAL POWERS--Continued

Tribal Sovereignty

In furthering the doctrines of tribal sovereignty and self-determination, the Department of the Interior has recognized their right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

Henry P. Rhatigan v. Muskogee Area Director, Bureau of Indian Affairs, 21 IBIA 258 (Mar. 20, 1992)

In furthering the doctrines of tribal sovereignty and self-determination, DOI has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's interpretation of its own laws.

When neither tribal sovereignty nor tribal historical values are at issue, review of a tribal ordinance by BIA and the Board of Indian Appeals in order to discharge the government-to-government relationship does not substantially interfere with the tribe's ability to maintain itself as a culturally and politically distinct entity.

United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs, & Joe Grayson, Jr., & Pam Thurman Jumper, Muskogee Area Director, Bureau of Indian Affairs, 22 IBIA 75 (June 4, 1992)

INDIANS--Continued

TRIBAL POWERS--Continued

Tribal Sovereignty--Continued

In furthering the doctrines of tribal sovereignty and self-determination, DOI has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

James C. Greendeer v. Minneapolis Area Director, Bureau of Indian Affairs, 22 IBIA 91 (June 10, 1992)

Pinoleville Indian Community Governing Council v. Sacramento Area Director, Bureau of Indian Affairs, 22 IBIA 176 (July 16, 1992)

TRUST RESPONSIBILITY

In determining whether to approve a gift deed of Indian trust land, the BIA's trust duty requires it to refrain from approving the deed if there is any question as to the Indian landowner's intent.

Estates of Evan Gillette, Sr., & Lizzie Gillette/Yellow Bird/Bellanger/Paint/Bedell, aka Elizabeth Burdell, 22 IBIA 133 (June 18, 1992)

WATER AND POWER RESOURCES

Irrigation Projects

The distinction between a real property tax and a special assessment is that a tax is levied against all

INDIANS--Continued

WATER AND POWER RESOURCES--Continued

Irrigation Projects--Continued

similarly situated property for purposes which will benefit the public generally and a special assessment is levied only against the specific property which benefits from the improvement financed by the assessment.

In determining whether charges imposed by an irrigation district are real property taxes for purposes of a particular Federal statute, the critical inquiry is whether such charges have the characteristics Congress had in mind in employing the term "real property taxes" in the statute.

Tohono O'Odham Nation v. Acting Phoenix Area Director, Bureau of Indian Affairs, 22 IBIA 220 (Aug. 14, 1992)

INTERVENTION

An intervenor in an appeal before the Board of Indian Appeals is normally limited to the issues raised by the appellant.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

JUDICIAL REVIEW

(See also Administrative Procedure)

A statute establishing time limitations for commencement of judicial actions for damages on behalf

JUDICIAL REVIEW--Continued

of the United States does not limit administrative proceedings within the Department of the Interior.

Anadarko Petroleum Corp., 122 IBLA 141 (Feb. 3, 1992)

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

Benson-Montin-Greer Drilling Corp., 123 IBLA 341
(July 15, 1992) 99 I.D. 115

MATERIALS ACT

A for-profit corporation which does not qualify for the free use of mineral materials under the provisions of the Materials Act of July 31, 1947, as amended, 30 U.S.C. § 601 (1988), and its implementing regulations, 43 CFR Part 3600, is properly cited for trespass for the unauthorized removal of mineral materials when it removes aggregate from a BLM pit without prior payment in violation of the terms of its material sales contract and 43 CFR 3610.1-3, even though it asserts that it was told by BLM personnel that it would not have to pay royalty for the material since the material was to be used on a BLM road-surfacing project. Reliance on such representations, although insufficient to grant appellant rights not authorized by law, may, however, demonstrate that the trespass was innocent, not willful, and an assessment of triple damages for such trespass will be set aside and the case remanded for reevaluation of the appropriate measure of damages.

So. Way Co., dba Southway Construction Co., Inc.,
123 IBLA 122 (May 21, 1992)

MATERIALS ACT--Continued

When the record supports a finding that the purchaser under a mineral materials sale contract committed a willful trespass by removing sand and gravel in excess of the volume limitation in the contract, a BLM levy of trespass damages determined in accordance with applicable state law will be affirmed.

Frehner Construction Co., Inc., 124 IBLA 310 (Nov. 4, 1992)

MILLSITES

(See also Mining Claims)

GENERALLY

A Government contest of a millsite claim is not subject to dismissal for failure to name all interested parties.

United States v. Loyall Fraker, 122 IBLA 24 (Jan. 3, 1992)

DEPENDENT

When the Government has presented evidence that a millsite is not being used or occupied for mining and milling purposes, and the claimant fails to refute that evidence, the millsite does not qualify as a dependent millsite pursuant to 30 U.S.C. § 42 (1988).

United States v. Loyall Fraker, 122 IBLA 24 (Jan. 3, 1992)

MILLSITES--Continued

DETERMINATION OF VALIDITY

When the Government has presented evidence that a quartz mill or reduction works is not present on a millsite, and the claimant fails to refute that evidence, the millsite does not qualify as an independent millsite pursuant to 30 U.S.C. § 42 (1988).

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United States v. Loyall Fraker, 122 IBLA 24 (Jan. 3, 1992)

MINERAL LANDS

(See also Mining Claims)

DETERMINATION OF CHARACTER OF

The Secretary may allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska. Land is mineral in character when known conditions at the relevant time are such as to reasonably engender the belief that the land contains mineral deposits of such quality and in such quantity as would

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

render their extraction profitable and justify expenditures to that end.

The Department has held that the critical time for determination of whether the land in a nonmineral entry is mineral in character is the time when equitable title vests. With respect to Native allotments, this occurs when the Department has approved the allotment application after completion of the required period of qualifying use and occupancy.

Where an application for patent is filed by a non-mineral claimant which embraces public lands within the boundaries of mineral claims located under the mining laws, the rights of the mining claimants must be considered prior to any ultimate disposition of the land. In such a context, a hearing is properly ordered upon notice to the competing nonmineral and mining claimants for the purpose of determining the character of the land claimed.

Anne Lynn Purdy, Heirs of Arthur Purdy, Sr., 122 IBLA 209 (Feb. 12, 1992)

Where the United States completes a mineral-in-character report after equitable title has passed to the Native allotment applicant, the determinative date for that report is the date of passage of equitable title, and BLM must establish that the facts in existence at the time equitable title passed required a determination that the land was mineral in character.

Mary Johansen, 122 IBLA 344 (Mar. 11, 1992)

MINERAL LANDS--Continued

ENVIRONMENT

BLM properly approves a plan for the drilling of a series of holes for the purpose of identifying the presence and extent of lead mineralization where it has adequately considered the impact of such drilling and associated activity on the environment, and determined that, given certain mitigation measures, any impact will be insignificant. BLM need not consider the impact of full-scale mining where approval of drilling does not commit BLM to approve further mining.

Missouri Coalition for the Environment et al., 124 IBLA 211 (Oct. 23, 1992)

MINERAL RESERVATION

In determining the appropriate amount of a bond for the protection of the owner of the surface estate of land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. §§ 291-301 (1976), BLM properly considers possible damages from projected mining operations within the entirety of the mining claims sought to be re-entered and occupied, relying on the current value of tangible improvements and of the projected lost grazing use of that land from such operations and subsequent reclamation. However, where BLM improperly discounts the value of future lost grazing use, the Board will recompute that value and set the proper bond amount.

William C. Hayes et ux., 122 IBLA 68 (Jan. 10, 1991)

Where BLM determines, prior to the filing of satisfactory reclamation final proof, that land within a reclamation homestead entry is valuable for oil and gas, the entryman may petition for reclassification of the land as not valuable for oil and gas in accordance with 43 CFR 2093.3(d). If that petition is denied, the entryman is to be offered the opportunity to request a hearing. At such a hearing, the entryman has the burden

MINERAL LANDS--Continued

MINERAL RESERVATION--Continued

of showing that the land is not valuable for oil and gas.

Jaye W. & Linda L. Johnson, 124 IBLA 196 (Oct. 20, 1992)

NONMINERAL ENTRIES

Where an application for patent is filed by a non-mineral claimant which embraces public lands within the boundaries of mineral claims located under the mining laws, the rights of the mining claimants must be considered prior to any ultimate disposition of the land. In such a context, a hearing is properly ordered upon notice to the competing nonmineral and mining claimants for the purpose of determining the character of the land claimed.

Anne Lynn Purdy, Heirs of Arthur Purdy, Sr., 122 IBLA 209 (Feb. 12, 1992)

PROSPECTING PERMITS

BLM properly approves a plan for the drilling of a series of holes for the purpose of identifying the presence and extent of lead mineralization where it has adequately considered the impact of such drilling and associated activity on the environment, and determined that, given certain mitigation measures, any impact will be insignificant. BLM need not consider the impact of full-scale mining where approval of drilling does not commit BLM to approve further mining.

Missouri Coalition for the Environment et al., 124 IBLA 211 (Oct. 23, 1992)

MINERAL LEASING ACT

(See also Bureau of Land Management, Coal Leases & Permits, Geothermal Leases, Oil & Gas Leases, Phosphate Leases & Permits, Potassium Leases & Permits, Sodium Leases & Permits)

GENERALLY

Where a mine fire occurs on fee land adjoining a Federal lease, and where the fee land and Federal lease are not part of a logical mining unit, the fire is not a force majeure providing grounds for relief from the terms of the Federal lease. Further, where the lessee fails to prove that the alleged force majeure event was the proximate cause of his nonperformance; that a good faith effort was made to overcome the problem; and that the problem was beyond his reasonable control, he is not entitled to relief.

A Federal coal lease may not be suspended under sec. 7(b) of the MLA, as amended, recognizing force majeure conditions, due to adverse market conditions.

Under sec. 7(b) of the MLA, as amended, a Federal coal lease is subject to two requirements: diligent development and continued operation. The requirement for continued operation may be suspended under that section "where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee," that is, by force majeure conditions. The requirement for diligent development, however, may not be suspended by the existence of force majeure conditions under sec. 7(b).

The only relief available under sec. 7(b) of the MLA, as amended, where force majeure conditions exist is from the lease requirement that "continued operation" be maintained. In order to achieve "continued operation," a lessee must, inter alia, achieve the production of not less than commercial quantities of recoverable coal reserves in each of the first 2 continued operation years "following the achievement of diligent development." Where lessees have not commenced operations on

MINERAL LEASING ACT--Continued

GENERALLY--Continued

a Federal leasehold, they have not achieved either "diligent development" or "continued operation," so that no relief is available to them under the force majeure provision.

Alfred G. Hoyl, 123 IBLA 169 (June 3, 1992)

99 I.D. 87

BONDS

The automatic stay of the Bankruptcy Code invoked upon the filing of a petition in bankruptcy applies to the commencement or continuation of administrative or judicial proceedings against the debtor or the debtor's assets. As a general rule, the stay does not bar proceedings against the debtor or the debtor's assets. As a general rule, the stay does not bar proceedings against a guarantor or surety on a coal lease bond securing the debtor's obligations under the lease. Hence, a motion on reconsideration to vacate the decision of the Board adjudicating the royalty due on a coal lease on the ground that the lessee came within the jurisdiction of the bankruptcy court prior to issuance of the Board's decision is properly denied where the decision is being relied upon to support a claim against the third party surety and not against the debtor/lessee.

Lone Star Steel Co. (On Reconsideration), 124 IBLA 144 (Sept. 30, 1992)

MINERAL LEASING ACT--Continued

CITIZENSHIP

The automatic stay of the Bankruptcy Code invoked upon the filing of a petition in bankruptcy applies to the commencement or continuation of administrative or judicial proceedings against the debtor or the debtor's assets. As a general rule, the stay does not bar proceedings against the debtor or the debtor's assets. As a general rule, the stay does not bar proceedings against a guarantor or surety on a coal lease bond securing the debtor's obligations under the lease. Hence, a motion on reconsideration to vacate the decision of the Board adjudicating the royalty due on a coal lease on the ground that the lessee came within the jurisdiction of the bankruptcy court prior to issuance of the Board's decision is properly denied where the decision is being relied upon to support a claim against the third party surety and not against the debtor/lessee.

Lone Star Steel Co. (On Reconsideration), 124 IBLA 144 (Sept. 30, 1992)

ENVIRONMENT

A suspension granted under sec. 39 of the MLA, as amended, "in the interest of conservation" suspends the requirement of sec. 7(a) and (b) of the MLA, as amended, requiring diligent development within 10 years of the date of issuance of the coal lease.

Sec. 39 of the MLA, as amended, provides for suspension of a Federal coal lease either (1) as a matter of right where, through some act, omission, or delay by a Federal agency, beneficial enjoyment of a lease has been precluded, such as where delays imposed upon the lessee due to administrative actions addressing environmental concerns have the effect of denying lessee's operator "timely access" to the property; or (2) as a matter of discretion, in the interest of conservation, e.g., to prevent damage to the environment. Where there is no persuasive evidence either of undue delay imposed

MINERAL LEASING ACT--Continued

ENVIRONMENT--Continued

by administrative actions addressing environmental concerns or of environmental harm, an application for suspension under sec. 39 is properly denied. The fact that a substantial investment of funds was made in three Federal leases does not create any cognizable right to retain the leases indefinitely. To the contrary, in the FCLA Act, Congress required timely development of the leases on pain of termination.

Alfred G. Hoyl, 123 IBLA 169 (June 3, 1992)

99 I.D. 87

RENTALS

A Federal coal lessee's obligation to pay rental may be suspended under sec. 39 of the MLA, as amended, as interpreted by Departmental regulation 43 CFR 3485.2(c), if he submits detailed supporting information, including (among other things) facts indicating whether the mine can be successfully operated under the existing lease terms. A request for suspension that does not comply with that regulation is properly rejected.

Alfred G. Hoyl, 123 IBLA 169 (June 3, 1992)

99 I.D. 87

ROYALTIES

It is proper for MMS to assess the full amount of the minimum royalty in lieu of production from a potassium lease for the calendar year in which the lease relinquishment was filed, without pro-rata reduction.

Earth Sciences, Inc., 123 IBLA 369 (July 23, 1992)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

Filing a noncompetitive oil and gas lease offer when the lands are available for leasing does not establish a legal or equitable right to a lease if the land subsequently become unavailable for leasing by operation of law. Congress mandated that lands within the Ouachita National Forest be offered for competitive leasing even though valid noncompetitive lease offers may be outstanding. If lands were offered at a competitive sale and a bid in excess of the national minimum acceptable bid was received from a responsible qualified bidder then the pending noncompetitive offer to lease that tract was properly rejected.

William E. Dent, Jr., 122 IBLA 152 (Feb. 4, 1992)

MINERALS EXPLORATION

BLM properly approves a plan for the drilling of a series of holes for the purpose of identifying the presence and extent of lead mineralization where it has adequately considered the impact of such drilling and associated activity on the environment, and determined that, given certain mitigation measures, any impact will be insignificant. BLM need not consider the impact of full-scale mining where approval of drilling does not commit BLM to approve further mining.

Missouri Coalition for the Environment et al., 124 IBLA 211 (Oct. 23, 1992)

MINING CLAIMS

(See also Hearings, Millsites, Mineral Lands,
Multiple Mineral Development Act, Surface Resources
Act)

GENERALLY

A notice that there was noncompliance with a mining plan of operations is affirmed where the record establishes that construction materials were stored contrary to a provision of the plan that prohibited outside storage.

An appeal from an order establishing a reclamation bond for a mining operation becomes moot if, during appeal, the plan expires or is modified.

Jim D. Wills, Reggie N. Wills, 123 IBLA 74 (May 11, 1992)

ABANDONMENT

Failure to file in the proper BLM office either evidence of assessment work performed or notice of intention to hold as required by 43 U.S.C. § 1744 (1988), and 43 CFR 3833.2 within the time period prescribed results in a conclusive presumption of abandonment of the mining claim.

Silver King Mining Co., 122 IBLA 357 (Mar. 19, 1992)

ASSESSMENT WORK

Where, in the absence of an approved plan of operations, a mining claimant cuts live trees in the course of road improvement activities on his mining claims, which are situated within a WSA, the impact of such activities exceeds in manner and degree the activities on the claims on Oct. 21, 1976, or temporarily suspended on that date, and impairs the suitability of the land for preservation as wilderness, BLM properly requires

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

him to immediately rehabilitate the impact of those activities.

Richard C. Behnke, 122 IBLA 131 (Jan. 27, 1992)

CONTESTS

A Government contest of a millsite claim is not subject to dismissal for failure to name all interested parties.

United States v. Loyall Fraker, 122 IBLA 24 (Jan. 3, 1992)

An agency is bound to adhere to criteria previously published by the agency to control future conduct. Where it is alleged that there has been a breach of this duty to be consistent in dealings with affected persons, there must be shown to be previously published criteria or pattern of conduct from which there has been a deviation. Where there is no such showing, there is no foundation for a finding of estoppel on this ground.

The allegation that a mining claimant refrained from opening a collapsed portal on a lode claim in reliance on a conversation with a FS employee was insufficient to establish grounds for estoppel of the Government to contest the validity of the claim where the portal was found.

Without calculations estimating tonnage of ore on a mining claim there was nothing to demonstrate that the claim might be part of a projected low-grade mining operation, and it was therefore null and void.

MINING CLAIMS--Continued

CONTESTS--Continued

Proof that claims were potentially profitable as part of a low-grade mining operation established the existence of a discovery thereon.

Where the low value of silver at hearing indicated that a claim could not be operated at a profit, but there was evidence that at the time the claim was included in a wilderness area 4 years previously a prevailing higher value would have allowed a profitable operation; the issue of the profitability of the claim is properly remanded for consideration of historic silver values as they might affect the question of discovery.

United States v. American Independence Mines & Minerals,
122 IBLA 177 (Feb. 10, 1992)

Expert testimony by a Government mineral examiner that he traversed all of the claims, sampled evident exposures, estimated the value of the contained mineral, and based his conclusion that there was no valuable mineral deposit on any of the claims on his finding that the values indicated by the highest assay would not cover his estimate of the mining cost establishes a prima facie case that the claims are invalid.

Drilling to obtain samples in support of a discovery will be allowed if the purpose of the drilling is to establish the quantity and continuous quality of exposed mineralization that would support a discovery if quantity and continuous quality of the exposed minerals continued for a reasonably projectable distance. In order to drill on withdrawn land to confirm a discovery, the claimant must show that he has disclosed valuable mineral on the claims and that a discovery would be confirmed by drilling.

United States v. Arthur Mavros et al., 122 IBLA 297
(Mar. 9, 1992)

MINING CLAIMS--Continued

CONTESTS--Continued

An ALJ properly declared lode mining claims null and void where the claimants failed to overcome a Government prima facie case that the claims were not supported by discovery of a valuable deposit of gold and silver when they failed to demonstrate that gold and silver were disclosed either on the surface or in old underground workings in such quality and quantity that they could be extracted, removed, and marketed at a profit. The claimants were properly prevented from drilling or reopening a tunnel where the land was withdrawn from mineral entry and there was no evidence that the proposed work was intended to confirm a preexisting discovery.

United States v. Emery Crowley & Rose Etta Jones
Ansotegui, 124 IBLA 374 (Dec. 10, 1992)

DETERMINATION OF VALIDITY

Because exposure of a vein or lode carrying mineral values is a necessary precondition to the validity of a lode claim, a claim where no mineral values were exposed was properly found to be invalid.

Without calculations estimating tonnage of ore on a mining claim there was nothing to demonstrate that the claim might be part of a projected low-grade mining operation, and it was therefore null and void.

Proof that claims were potentially profitable as part of a low-grade mining operation established the existence of a discovery thereon.

Where the low value of silver at hearing indicated that a claim could not be operated at a profit, but there was evidence that at the time the claim was included in a wilderness area 4 years previously a prevailing higher value would have allowed a profitable operation, the issue of the profitability of the claim is properly remanded for consideration of historic

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

silver values as they might affect the question of discovery.

United States v. American Independence Mines & Minerals,
122 IBLA 177 (Feb. 10, 1992)

Expert testimony by a Government mineral examiner that he traversed all of the claims, sampled evident exposures, estimated the value of the contained mineral, and based his conclusion that there was no valuable mineral deposit on any of the claims on his finding that the values indicated by the highest assay would not cover his estimate of the mining cost establishes a prima facie case that the claims are invalid.

Drilling to obtain samples in support of a discovery will be allowed if the purpose of the drilling is to establish the quantity and continuous quality of exposed mineralization that would support a discovery if quantity and continuous quality of the exposed minerals continued for a reasonably projectable distance. In order to drill on withdrawn land to confirm a discovery, the claimant must show that he has disclosed valuable mineral on the claims and that a discovery would be confirmed by drilling.

United States v. Arthur Mavros et al., 122 IBLA 297
(Mar. 9, 1992)

An ALJ properly declared lode mining claims null and void where the claimants failed to overcome a Government prima facie case that the claims were not supported by discovery of a valuable deposit of gold and silver when they failed to demonstrate that gold and silver were disclosed either on the surface or in old underground workings in such quality and quantity that they could be extracted, removed, and marketed at a profit. The claimants were properly prevented from drilling or reopening a tunnel where the land was withdrawn from mineral entry and there was no evidence that

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

the proposed work was intended to confirm a preexisting discovery.

United States v. Emery Crowley & Rose Etta Jones
Ansotegui, 124 IBLA 374 (Dec. 10, 1992)

DISCOVERY

Generally

Expert testimony by a Government mineral examiner that he traversed all of the claims, sampled evident exposures, estimated the value of the contained mineral, and based his conclusion that there was no valuable mineral deposit on any of the claims on his finding that the values indicated by the highest assay would not cover his estimate of the mining cost establishes a prima facie case that the claims are invalid.

Drilling to obtain samples in support of a discovery will be allowed if the purpose of the drilling is to establish the quantity and continuous quality of exposed mineralization that would support a discovery if quantity and continuous quality of the exposed minerals continued for a reasonably projectable distance. In order to drill on withdrawn land to confirm a discovery, the claimant must show that he has disclosed valuable mineral on the claims and that a discovery would be confirmed by drilling.

United States v. Arthur Mavros et al., 122 IBLA 297
(Mar. 9, 1992)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

An ALJ properly declared lode mining claims null and void where the claimants failed to overcome a Government prima facie case that the claims were not supported by discovery of a valuable deposit of gold and silver when they failed to demonstrate that gold and silver were disclosed either on the surface or in old underground workings in such quality and quantity that they could be extracted, removed, and marketed at a profit. The claimants were properly prevented from drilling or reopening a tunnel where the land was withdrawn from mineral entry and there was no evidence that the proposed work was intended to confirm a preexisting discovery.

United States v. Emery Crowley & Rose Etta Jones
Ansotequi, 124 IBLA 374 (Dec. 10, 1992)

Marketability

Without calculations estimating tonnage of ore on a mining claim there was nothing to demonstrate that the claim might be part of a projected low-grade mining operation, and it was therefore null and void.

Proof that claims were potentially profitable as part of a low-grade mining operation established the existence of a discovery thereon.

Where the low value of silver at hearing indicated that a claim could not be operated at a profit, but there was evidence that at the time the claim was included in a wilderness area 4 years previously a prevailing higher value would have allowed a profitable operation, the issue of the profitability of the claim is properly remanded for consideration of historic

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

silver values as they might affect the question of discovery.

United States v. American Independence Mines & Minerals,
122 IBLA 177 (Feb. 10, 1992)

An ALJ properly declared lode mining claims null and void where the claimants failed to overcome a Government prima facie case that the claims were not supported by discovery of a valuable deposit of gold and silver when they failed to demonstrate that gold and silver were disclosed either on the surface or in old underground workings in such quality and quantity that they could be extracted, removed, and marketed at a profit. The claimants were properly prevented from drilling or reopening a tunnel where the land was withdrawn from mineral entry and there was no evidence that the proposed work was intended to confirm a preexisting discovery.

United States v. Emery Crowley & Rose Etta Jones
Ansotegui, 124 IBLA 374 (Dec. 10, 1992)

ENVIRONMENT

A mining plan of operations limited in duration to operations on land in a wild and scenic river study area in 1989 was not shown to continue in effect after Dec. 31, 1989.

A mining plan of operations was properly required for dredging operations in a wild and scenic river study area pursuant to Departmental regulation 43 CFR 3809.1-4 when claimants failed to show that their operations were

MINING CLAIMS--Continued

ENVIRONMENT--Continued

excepted from the general rule that mining in such a study area required submission of a plan of operations.

Pierre J. Ott, Jim D. Wills, 122 IBLA 371 (Apr. 2, 1992)

When an EA of a proposed mining plan of operations for exploration does not include the analysis of whether potential mining is sufficiently specific to adequately analyze it at the exploration stage and of the details of the exploration process, the mining process, and other allegedly connected activities in the area that is necessary for BLM's decision to withstand judicial review, BLM's decision will be set aside and the matter remanded so the EA may be supplemented.

Concerned Citizens for Responsible Mining et al., 124 IBLA 191 (Oct. 15, 1992)

"Cumulative impact" is the impact on the environment that results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or persons undertake such other actions. An EA examining the cyanide retention qualities of a heap leach operation need not include a discussion of an exploration plan that, during the pendency of the appeal, is withdrawn by the operator.

Red Thunder, Inc., et al., 124 IBLA 267 (Nov. 3, 1992)

MINING CLAIMS--Continued

LANDS SUBJECT TO

It is proper for BLM to declare a lode mining claim null and void ab initio if it was located on land segregated from mineral entry by a valid land classification at the time of location.

Mike & Sandra Sprunger, 123 IBLA 330 (July 10, 1992)

LOCATION

BLM properly dismissed a protest challenging a mineral patent application for the reason that the mining claim was not properly located because it was staked on land withdrawn from mining where the record established as a fact that the claim was staked after revocation of the withdrawal.

Scott Burnham, 124 IBLA 97 (Sept. 16, 1992)

MARKETABILITY

Without calculations estimating tonnage of ore on a mining claim there was nothing to demonstrate that the claim might be part of a projected low-grade mining operation, and it was therefore null and void.

Proof that claims were potentially profitable as part of a low-grade mining operation established the existence of a discovery thereon.

Where the low value of silver at hearing indicated that a claim could not be operated at a profit, but there was evidence that at the time the claim was included in a wilderness area 4 years previously a prevailing higher value would have allowed a profitable operation, the issue of the profitability of the claim is properly remanded for consideration of historic

MINING CLAIMS--Continued

MARKETABILITY--Continued

silver values as they might affect the question of discovery.

United States v. American Independence Mines & Minerals,
122 IBLA 177 (Feb. 10, 1992)

An ALJ properly declared lode mining claims null and void where the claimants failed to overcome a Government prima facie case that the claims were not supported by discovery of a valuable deposit of gold and silver when they failed to demonstrate that gold and silver were disclosed either on the surface or in old underground workings in such quality and quantity that they could be extracted, removed, and marketed at a profit. The claimants were properly prevented from drilling or reopening a tunnel where the land was withdrawn from mineral entry and there was no evidence that the proposed work was intended to confirm a preexisting discovery.

United States v. Emery Crowley & Rose Etta Jones
Ansotegui, 124 IBLA 374 (Dec. 10, 1992)

MILLSITES

When the Government has presented evidence that a quartz mill or reduction works is not present on a millsite, and the claimant fails to refute that evidence, the millsite does not qualify as an independent millsite pursuant to 30 U.S.C. § 42 (1988).

When the Government has presented evidence that a millsite is not being used or occupied for mining and milling purposes, and the claimant fails to refute that

MINING CLAIMS--Continued

MILLSITES--Continued

evidence, the millsite does not qualify as a dependent millsite pursuant to 30 U.S.C. § 42 (1988).

United States v. Loyall Fraker, 122 IBLA 24 (Jan. 3, 1992)

PATENT

BLM properly dismissed a protest challenging a mineral patent application for the reason that the mining claim was not properly located because it was staked on land withdrawn from mining where the record established as a fact that the claim was staked after revocation of the withdrawal.

Scott Burnham, 124 IBLA 97 (Sept. 16, 1992)

PLAN OF OPERATIONS

Where, in the absence of an approved plan of operations, a mining claimant cuts live trees in the course of road improvement activities on his mining claims, which are situated within a WSA, the impact of such activities exceeds in manner and degree the activities on the claims on Oct. 21, 1976, or temporarily suspended on that date, and impairs the suitability of the land for preservation as wilderness, BLM properly requires him to immediately rehabilitate the impact of those activities.

Richard C. Behnke, 122 IBLA 131 (Jan. 27, 1992)

MINING CLAIMS--Continued

PLAN OF OPERATIONS--Continued

A notice that there was noncompliance with a mining plan of operations is affirmed where the record establishes that construction materials were stored contrary to a provision of the plan that prohibited outside storage.

An appeal from an order establishing a reclamation bond for a mining operation becomes moot if, during appeal, the plan expires or is modified.

Jim D. Wills, Reggie N. Wills, 123 IBLA 74 (May 11, 1992)

Under 43 CFR 3809.1-4(b)(2), an approved plan of operations is required prior to commencing any operation except casual use in areas designated as a potential addition or an actual component of the national wild and scenic rivers system.

Because Departmental regulation 43 CFR 3809.1-4(b)(2) requires approval of a plan of operations prior to commencing any operation except casual use in areas designated as a potential addition to the national wild and scenic rivers system as well as actual components thereof, any operation within the boundaries on a map identified as a river area under 16 U.S.C. § 1274(b) (1988), have been completed, even though the map includes land in addition to the area indicated when the river was listed as a potential addition under 16 U.S.C. § 1276 (1988).

Joe Trow, 123 IBLA 96 (May 12, 1992)

MINING CLAIMS--Continued

PLAN OF OPERATIONS--Continued

A mining claimant who constructs a road and clears land in a WSA in connection with a post-FLPMA mining claim violates 43 CFR 3802.1-1 by failing to file a plan of operations and receive approval prior to beginning work. Such unauthorized actions constitute a trespass under 43 CFR 2801.3.

A mining claimant who constructs a road across public lands in connection with a mining claim without filing a notice of such action with BLM violates 43 CFR 3809.1-3(a). Such construction is unauthorized and constitutes a trespass under 43 CFR 2801.3.

A mining claimant who violates 43 CFR 3802.1 by constructing a road in a WSA in conjunction with a mining claim without filing and receiving approval of a plan of operations or who violates 43 CFR 3809.1-3(a) by constructing an access road across public lands to a mining claim without filing a notice of such action with BLM is liable for the costs of rehabilitating and stabilizing such lands and for costs incurred by the United States in the investigation and termination of such trespass.

Karry K. Klump, 123 IBLA 377 (July 23, 1992)

The Secretary of the Interior is required by sec. 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1988), to manage lands under review for wilderness suitability so as to prevent impairment of their wilderness characteristics, subject to grandfathered uses and valid existing rights. Under this standard, a plan of operations for a mining claim located after 1976 is properly rejected if it entails impacts which cannot be reclaimed to the point of being substantially unnoticeable by the time the Secretary is to make his recommendation regarding wilderness designation.

Enactment of sec. 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1988), had the effect of amending the Mining Law of 1872 to the extent of precluding mining-related activities on lands within a WSA which would impair the

MINING CLAIMS--Continued

PLAN OF OPERATIONS--Continued

wilderness characteristics of the area except for valid existing rights and the continuation of pre-FLPMA mining activities in the same manner and degree as conducted on Oct. 21, 1976.

Under the regulations at 43 CFR Subpart 3802 governing mining operations within a WSA, a failure of BLM to adjudicate the plan of operations within the time allowed does not constitute approval of the plan. Although a claimant may proceed, pursuant to 43 CFR 3802.1-5(e), with activities proposed in a plan of operations before agency approval is obtained, if BLM later determines that the action taken impairs wilderness suitability of affected lands it may properly take action to modify or terminate the offending activity.

A mineral entry final certificate is prepared by BLM for a mining claim after it has determined on the basis of the documents submitted that the claim is apparently valid in that: the land was available at the time of location; acts necessary to keep it in force including annual assessment work have been done; no adverse claim exists; and the applicant has paid the purchase price. However, a mineral examination to establish the discovery of a locatable valuable mineral deposit on the claim is still required to support a patent and, as long as title remains in the United States, mining activities are properly regulated pursuant to relevant statutes and regulations to protect the surface resources.

Internat'l Silica Corp., 124 IBLA 155 (Sept. 30, 1992)

When an EA of a proposed mining plan of operations for exploration does not include the analysis of whether potential mining is sufficiently specific to adequately analyze it at the exploration stage and of the details of the exploration process, the mining process, and other allegedly connected activities in the area that is necessary for BLM's decision to withstand judicial

MINING CLAIMS--Continued

PLAN OF OPERATIONS--Continued

review, BLM's decision will be set aside and the matter remanded so the EA may be supplemented.

Concerned Citizens for Responsible Mining et al.,
124 IBLA 191 (Oct. 15, 1992)

BLM's decision to approve a mining plan amendment (1) to allow cyanide leaching operations at a gold mine to proceed and (2) to allow leach pads to be abandoned, and its accompanying FONSI will be affirmed where the record (including an extensive report demonstrating that abandonment of leach pads will not result in discharge of harmful levels of cyanide into the environment) reveals no unnecessary or undue degradation of the lands, and BLM's decision is not convincingly challenged on appeal.

The Board will affirm a FONSI with respect to a proposed action if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination that the impact is insignificant is reasonable in light of the environmental analysis. When mitigating measures are imposed to reduce impacts of the environmental effects of the proposed action that might otherwise be significant, a FONSI is properly affirmed.

Where the Montana State Historic Preservation Office is aware that an area may possess traditional cultural values, owing to the presence of Native American fasting and vision questing sites there, but nevertheless concludes that no properties eligible for inclusion on the National Register of Historic Places were identified in the area, BLM is not required to comply with sec. 106 of the National Historic Preservation Act. Rather, it is adequate for BLM to address effects of gold mining on cultural values through its compliance with the American Indian Religious Freedom Act. BLM complies with the latter Act where it actively solicits the opinions of Native Americans, both

MINING CLAIMS--Continued

PLAN OF OPERATIONS--Continued

individually and in tribal groups, and considers reasonable mitigating measures.

Red Thunder, Inc., et al., 124 IBLA 267 (Nov. 3, 1992)

POWERSITE LANDS

Locators of claims on land opened under 30 U.S.C. § 621(a) (1988), have been required by 30 U.S.C. § 623 (1988), to file copies of their location notices with BLM within 1 year after Aug. 11, 1955, for all locations previously made, or within 60 days of location for locations thereafter made.

The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1988), authorizes the location and patent of mining claims on public lands withdrawn for power purposes. However, the Department may hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land and may issue an order providing for one of the following three alternatives: (1) a complete prohibition on placer mining; (2) permission to engage in placer mining upon the condition that the locator shall restore the surface of the claim; or (3) a general permission to engage in placer mining.

Where a copy of the notice of location of a mining claim on land withdrawn for powersite purposes was not recorded with BLM within the time prescribed by 30 U.S.C. § 623 (1988), a notice of intent from BLM to conduct a hearing under sec. 621(b) will not be considered untimely if the notice of intent was issued within 60 days after receipt of some affirmative acknowledgement by the owner of the claim that the claim was subject to that provision of the Act.

To determine whether mining would "substantially interfere" with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1988), the Department is required

MINING CLAIMS--Continued

POWERSITE LANDS--Continued

to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of mining outweigh the benefits from other uses.

In making a determination whether placer mining operations would substantially interfere with other uses of powersite lands, the party who seeks to restrict or prohibit placer mining bears the initial burden of presenting a prima facie case. The burden then shifts to the mining claimant to overcome the case so proved by a preponderance of the evidence.

United States v. Phyrne Brown, 124 IBLA 247 (Nov. 2, 1992)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD

Failure to file in the proper BLM office either evidence of assessment work performed or notice of intention to hold as required by 43 U.S.C. § 1744 (1988), and 43 CFR 3833.2 within the time period prescribed results in a conclusive presumption of abandonment of the mining claim.

Silver King Mining Co., 122 IBLA 357 (Mar. 19, 1992)

In accordance with 43 CFR 3833.1-3, annual filings for mining claims must be accompanied by a nonrefundable service charge of \$5 for each claim. Annual filings received by BLM on or after Jan. 1, 1991, which are not accompanied by the proper service charges are, according to 43 CFR 3833.1-4(b), not to be accepted and are to be returned to the claimant/owner without further action. Thus, there can be no timely annual filing without the accompanying service charge and if the filing deadline

MINING CLAIMS--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK
OR NOTICE OF INTENTION TO HOLD--Continued

passes without proper payment, the claims may be properly declared abandoned and void.

Where a mining claimant timely files evidence of annual assessment work for 15 claims, but only timely tenders sufficient service charges to cover the filing of eight of those claims, and the record contains no evidence of how the service fee is to be applied, BLM shall require the claimant to select the eight claims to which the money tendered should be applied. The remaining seven claims may be properly declared abandoned and void.

Norman Filip, 124 IBLA 122 (Sept. 24, 1992)

RECORDATION OF CERTIFICATE OR NOTICE OF LOCATION

It is proper for BLM to reject location notices for placer mining claims submitted for recordation under 43 CFR 3833.1-4(a) because the claimants failed to tender the proper service charge within 30 days from the date claimants were deemed to have constructively received a deficiency notice requiring such payment. The record establishes that the deficiency notice was addressed to and the post office properly attempted delivery to the claimants' last address of record.

Gerhard W. Befeld, Marie D. Befeld, 123 IBLA 118
(May 19, 1992)

Under 43 CFR 3833.1-4(a), where a mining claimant submitted affidavits of assessment work and the accompanying check for service charges was not honored by his bank, it was improper for BLM to reject the affidavits without first providing him with a deficiency notice

MINING CLAIMS--Continued

RECORDATION OF CERTIFICATE OR NOTICE OF LOCATION--Continue

informing him that he had 30 days from receipt of the notice in which to submit the required service fee.

R. Keith Barrett, 123 IBLA 240 (June 12, 1992)

The "proper office of BLM" for purposes of recording mining claims is defined in 43 CFR 3833.0-5(g) as the BLM office listed in 43 CFR 1821.1-2(d) as having jurisdiction over the area in which the claims are located.

The Board will apply the doctrine of estoppel to a situation where certificates of location are filed for recordation with a BLM State Office and that office informs the claimant by letter, which constitutes an official decision, of its refusal to accept them due to a postdated check for the recordation fees, but fails to inform him that the office is not the "proper office of BLM" in which to file the certificates. Where the claimant in reliance thereon refiles the certificates with the same State Office and they are rejected, such failure constitutes the affirmative concealment of a material fact.

Leitmotif Mining Co., Inc., 124 IBLA 344 (Dec. 1, 1992)

SPECIAL ACTS

Locators of claims on land opened under 30 U.S.C. § 621(a) (1988), have been required by 30 U.S.C. § 623 (1988), to file copies of their location notices with BLM within 1 year after Aug. 11, 1955, for all locations previously made, or within 60 days of location for locations thereafter made.

The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1988), authorizes the location and patent of mining claims on public lands withdrawn for power purposes. However, the Department may hold a

MINING CLAIMS--Continued

SPECIAL ACTS--Continued

public hearing to determine whether placer mining operations would substantially interfere with other uses of the land and may issue an order providing for one of the following three alternatives: (1) a complete prohibition on placer mining; (2) permission to engage in placer mining upon the condition that the locator shall restore the surface of the claim; or (3) a general permission to engage in placer mining.

Where a copy of the notice of location of a mining claim on land withdrawn for powersite purposes was not recorded with BLM within the time prescribed by 30 U.S.C. § 623 (1988), a notice of intent from BLM to conduct a hearing under sec. 621(b) will not be considered untimely if the notice of intent was issued within 60 days after receipt of some affirmative acknowledgement by the owner of the claim that the claim was subject to that provision of the Act.

To determine whether mining would "substantially interfere" with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1988), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of mining outweigh the benefits from other uses.

In making a determination whether placer mining operations would substantially interfere with other uses of powersite lands, the party who seeks to restrict or prohibit placer mining bears the initial burden of presenting a prima facie case. The burden then shifts to the mining claimant to overcome the case so proved by a preponderance of the evidence.

United States v. Phyrne Brown, 124 IBLA 247 (Nov. 2, 1992)

MINING CLAIMS--Continued

SURFACE USES

In determining the appropriate amount of a bond for the protection of the owner of the surface estate of land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. §§ 291-301 (1976), BLM properly considers possible damages from projected mining operations within the entirety of the mining claims sought to be re-entered and occupied, relying on the current value of tangible improvements and of the projected lost grazing use of that land from such operations and subsequent reclamation. However, where BLM improperly discounts the value of future lost grazing use, the Board will recompute that value and set the proper bond amount.

William C. Hayes et ux., 122 IBLA 68 (Jan. 10, 1991)

A mining plan of operations limited in duration to operations on land in a wild and scenic river study area in 1989 was not shown to continue in effect after Dec. 31, 1989.

A mining plan of operations was properly required for dredging operations in a wild and scenic river study area pursuant to Departmental regulation 43 CFR 3809.1-4 when claimants failed to show that their operations were excepted from the general rule that mining in such a study area required submission of a plan of operations.

Pierre J. Ott, Jim D. Wills, 122 IBLA 371 (Apr. 2, 1992)

TITLE

When unpatented mining claims have been donated to the NPS by quitclaim deed and the record before BLM discloses a dispute regarding the chain of title to the claims or the existence of encumbrances upon title to the claims, neither the regulations applicable to mining claims recordation nor the regulations governing acceptance of donated interests in real property authorizes

MINING CLAIMS--Continued

TITLE--Continued

BLM to adjudicate title to the claims and a decision purporting to do so is properly vacated.

David J. Bartoli, 123 IBLA 27 (Apr. 29, 1992)
99 I.D. 55

WITHDRAWN LAND

Drilling to obtain samples in support of a discovery will be allowed if the purpose of the drilling is to establish the quantity and continuous quality of exposed mineralization that would support a discovery if quantity and continuous quality of the exposed minerals continued for a reasonably projectable distance. In order to drill on withdrawn land to confirm a discovery, the claimant must show that he has disclosed valuable mineral on the claims and that a discovery would be confirmed by drilling.

United States v. Arthur Mavros et al., 122 IBLA 297
(Mar. 9, 1992)

BLM properly dismissed a protest challenging a mineral patent application for the reason that the mining claim was not properly located because it was staked on land withdrawn from mining where the record established as a fact that the claim was staked after revocation of the withdrawal.

Scott Burnham, 124 IBLA 97 (Sept. 16, 1992)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

An ALJ properly declared lode mining claims null and void where the claimants failed to overcome a Government prima facie case that the claims were not supported by discovery of a valuable deposit of gold and silver when they failed to demonstrate that gold and silver were disclosed either on the surface or in old underground workings in such quality and quantity that they could be extracted, removed, and marketed at a profit. The claimants were properly prevented from drilling or reopening a tunnel where the land was withdrawn from mineral entry and there was no evidence that the proposed work was intended to confirm a preexisting discovery.

United States v. Emery Crowley & Rose Etta Jones
Ansotegui, 124 IBLA 374 (Dec. 10, 1992)

MINING CLAIMS RIGHTS RESTORATION ACT

Locators of claims on land opened under 30 U.S.C. § 621(a) (1988), have been required by 30 U.S.C. § 623 (1988), to file copies of their location notices with BLM within 1 year after Aug. 11, 1955, for all locations previously made, or within 60 days of location for locations thereafter made.

The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1988), authorizes the location and patent of mining claims on public lands withdrawn for power purposes. However, the Department may hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land and may issue an order providing for one of the following three alternatives: (1) a complete prohibition on placer mining; (2) permission to engage in placer mining upon the condition that the locator shall restore

MINING CLAIMS RIGHTS RESTORATION ACT--Continued

the surface of the claim; or (3) a general permission to engage in placer mining.

Where a copy of the notice of location of a mining claim on land withdrawn for powersite purposes was not recorded with BLM within the time prescribed by 30 U.S.C. § 623 (1988), a notice of intent from BLM to conduct a hearing under sec. 621(b) will not be considered untimely if the notice of intent was issued within 60 days after receipt of some affirmative acknowledgement by the owner of the claim that the claim was subject to that provision of the Act.

To determine whether mining would "substantially interfere" with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1988), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of mining outweigh the benefits from other uses.

In making a determination whether placer mining operations would substantially interfere with other uses of powersite lands, the party who seeks to restrict or prohibit placer mining bears the initial burden of presenting a prima facie case. The burden then shifts to the mining claimant to overcome the case so proved by a preponderance of the evidence.

United States v. Phyrne Brown, 124 IBLA 247 (Nov. 2, 1992)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969
(See also Environmental Policy Act)

GENERALLY

BLM does not violate sec. 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (1988), and its implementing regulations by issuing a notice of realty action for an exchange prior to preparation of an EA if the decision to proceed with the exchange is not made until after consideration of the EA.

Howard B. Keck, Jr., 124 IBLA 44 (Aug. 26, 1992)

ENVIRONMENTAL STATEMENTS

It is proper for BLM to deny a protest to a proposed timber sale when it has fully considered all of the probably site-specific and cumulative environmental impacts of the sale (including the impact on the Northern spotted owl, a Federally listed threatened species) and concluded that there will be no significant environmental impact not previously considered in an applicable EIS, and the appellant has failed to demonstrate otherwise.

In re Cedar Pot Thinning Sale et al., 122 IBLA 53
(Jan. 9, 1992)

It is proper for BLM to deny a protest to a proposed timber sale contending that BLM failed to consider the impact of permitted overstory removal, salvage operations, and road building on the Pacific yew and that the proposed timber sale does not conform with applicable State office policy regarding management of the yew when BLM specifically reserved the yew from cutting in the sale contract, and the protestant submits no

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

evidence that the sale may adversely affect the yew or that BLM is not abiding by its stated policy.

In re Grizzly Knob Timber Sale, 122 IBLA 155 (Feb. 4, 1992)

It was proper for BLM to approve a notice of intent to conduct oil and gas geophysical exploration operations utilizing truck-mounted vibrating equipment and seismic wave-receiving stations after considering the environmental impact of the contemplated operations and alternatives thereto (including the no-action alternative), and concluding that no significant impact would result. Under the facts of this case, there was no error in BLM's failure to consider the possible subsequent drilling of a proposed well in the project area in conjunction with geophysical exploration operations.

Southern Utah Wilderness Alliance, Utah Chapter, Sierra Club, 122 IBLA 165 (Feb. 7, 1992)

A determination that approval of a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made; all relevant areas of environmental concern have been identified; and the final determination is reasonable in light of the environmental analysis. A party challenging the determination must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. The ultimate burden of proof is on the challenging party. Mere differences of opinion provide no basis for reversal. A BLM decision approving a proposal to conduct seismic oil and gas geophysical exploration will be set aside where the EA upon which the decision was based failed to consider the no-action alternative and inadequately analyzed the effects of the proposed

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

activity on wildlife in the project area, and BLM failed to provide a public comment period on the EA.

Southern Utah Wilderness Alliance, 122 IBLA 334
(Mar. 11, 1992)

An EA may be tiered to an EIS. The purpose of tiering is to eliminate repetitive discussions of issues and allow focus on the issues ripe for decision. The similarity of environmental issues determines whether tiering is appropriate, not the nature of the decision made based upon the review. When an EA is tiered to an EIS, the question is whether the EIS adequately addresses the environmental effects of the proposed actions or whether, because the analysis is broad and does not address specific impacts, a supplemental statement is required.

When a programmatic EIS is sufficiently detailed, and there is not change in circumstances or departure from the policy in the programmatic EIS, no useful purpose would be served by requiring a site-specific EIS. Major variations between the actions considered in a broad EIS and a site-specific EA may vitiate compliance with NEPA. Conversely, the fact specific actions were anticipated in an EIS or matters addressed in the EIS were later carefully reviewed in regard to undertaking specific actions supports a finding of compliance with NEPA.

Absent an analysis of the possible consequences should proposed range-land improvement projects not be fully successful and lacking an analysis of the immediate consequences of undertaking the projects, the Board cannot conclude that BLM has identified the relevant areas of environmental concern and has taken a hard look at the environmental consequences of the projects.

Southern Utah Wilderness Alliance, The Wilderness Society, Utah Chapter Sierra Club, 123 IBLA 302
(June 25, 1992)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

An EA of a proposal to exchange public for private land is sufficiently detailed where it considers, generally, the environmental impact of likely development where no plans for development have yet been proposed and such plans, if and when formulated, will be subject to State environmental review.

Where review of the reasonably foreseeable impacts of a proposed exchange of public for private land, including likely development of the land, failed to disclose a potentially significant impact and there was no evidence to the contrary an EIS was not required to be prepared.

In conducting an environmental review of a proposal to exchange public for private land, BLM need not consider the alternative of conveying other land if it is not desired by the private party involved in the exchange and conveyance of such land would not satisfy the purpose of the exchange.

Howard B. Keck, Jr., 124 IBLA 44 (Aug. 26, 1992)

A determination that a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the determination must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. The ultimate burden of proof is on the challenging party, and such burden must be met by objective proof. Mere differences of opinion provide no basis for reversal.

The reasonableness of a FONSI will be upheld where the agency (1) has taken a hard look at the environmental consequences of the proposed action; (2) has identified

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

the relevant areas of environmental concern; and (3) has made a convincing case that the impact is insignificant, or (4) if there is significant impact, that changes in the project have sufficiently minimized such impact. When the EA prepared for a proposed action identifies significant environmental impacts and suggests mitigating measures designed to minimize those impacts, but BLM's decision record/FONSI fails to incorporate the identified mitigating measures into the proposed action, BLM's decision will be set aside.

Sierra Club Legal Defense Fund, Inc., Citizen Alert,
124 IBLA 130 (Sept. 30, 1992)

Analysis under NEPA of the impacts to the human environment of an oil and gas pipeline designed to serve certain existing and proposed oil and gas wells properly considers the foreseeable cumulative impacts of the pipeline and the wells it is designed to serve.

An environmental analysis of the impacts of a proposed action may properly be tiered to and incorporate by reference from an EIS for a larger plan of action where the program analyzed in the EIS is not so broad as to preclude analysis of the impacts of the specific proposal.

On appeal from a FONSI based on an EA tiered to an EIS, the record must establish that BLM has taken a hard look at the proposed action, identified relevant areas of environmental concern, and that impacts of the proposed action not previously analyzed in the EIS are insignificant. Where the record shows a cumulative significant impact to cultural resources, a FONSI is inappropriate.

Southern Utah Wilderness Alliance et al., 124 IBLA 162
(Oct. 1, 1992)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

When an EA of a proposed mining plan of operations for exploration does not include the analysis of whether potential mining is sufficiently specific to adequately analyze it at the exploration stage and of the details of the exploration process, the mining process, and other allegedly connected activities in the area that is necessary for BLM's decision to withstand judicial review, BLM's decision will be set aside and the matter remanded so the EA may be supplemented.

Concerned Citizens for Responsible Mining et al.,
124 IBLA 191 (Oct. 15, 1992)

BLM properly approves a plan for the drilling of a series of holes for the purpose of identifying the presence and extent of lead mineralization where it has adequately considered the impact of such drilling and associated activity on the environment, and determined that, given certain mitigation measures, any impact will be insignificant. BLM need not consider the impact of full-scale mining where approval of drilling does not commit BLM to approve further mining.

Missouri Coalition for the Environment et al., 124 IBLA
211 (Oct. 23, 1992)

FINDING OF NO SIGNIFICANT IMPACT

A determination that approval of a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made; all relevant areas of environmental concern have been identified; and the final determination is reasonable in light of the environmental analysis. A party challenging the determination must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

FINDING OF NO SIGNIFICANT IMPACT--Continued

question of material significance to the proposed action. The ultimate burden of proof is on the challenging party. Mere differences of opinion provide no basis for reversal. A BLM decision approving a proposal to conduct seismic oil and gas geophysical exploration will be set aside where the EA upon which the decision was based failed to consider the no-action alternative and inadequately analyzed the effects of the proposed activity on wildlife in the project area, and BLM failed to provide a public comment period on the EA.

Southern Utah Wilderness Alliance, 122 IBLA 334
(Mar. 11, 1992)

Where review of the reasonably foreseeable impacts of a proposed exchange of public for private land, including likely development of the land, failed to disclose a potentially significant impact and there was no evidence to the contrary an EIS was not required to be prepared.

Howard B. Keck, Jr., 124 IBLA 44 (Aug. 26, 1992)

Activity planning implementing an off-highway vehicle project management plan, based upon an environmental assessment sufficient to support an informed judgment, may not be overcome by a mere difference of opinion.

High Desert Multiple-Use Coalition et al., 124 IBLA 125 (Sept. 28, 1992)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

FINDING OF NO SIGNIFICANT IMPACT--Continued

A determination that a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the determination must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. The ultimate burden of proof is on the challenging party, and such burden must be met by objective proof. Mere differences of opinion provide no basis for reversal.

The reasonableness of a FONSI will be upheld where the agency (1) has taken a hard look at the environmental consequences of the proposed action; (2) has identified the relevant areas of environmental concern; and (3) has made a convincing case that the impact is insignificant, or (4) if there is significant impact, that changes in the project have sufficiently minimized such impact. When the EA prepared for a proposed action identifies significant environmental impacts and suggests mitigating measures designed to minimize those impacts, but BLM's decision record/FONSI fails to incorporate the identified mitigating measures into the proposed action, BLM's decision will be set aside.

Sierra Club Legal Defense Fund, Inc., Citizen Alert,
124 IBLA 130 (Sept. 30, 1992)

Analysis under NEPA of the impacts to the human environment of an oil and gas pipeline designed to serve certain existing and proposed oil and gas wells properly considers the foreseeable cumulative impacts of the pipeline and the wells it is designed to serve.

An environmental analysis of the impacts of a proposed action may properly be tiered to and incorporate by reference from an EIS for a larger plan of action

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

FINDING OF NO SIGNIFICANT IMPACT--Continued

where the program analyzed in the EIS is not so broad as to preclude analysis of the impacts of the specific proposal.

On appeal from a FONSI based on an EA tiered to an EIS, the record must establish that BLM has taken a hard look at the proposed action, identified relevant areas of environmental concern, and that impacts of the proposed action not previously analyzed in the EIS are insignificant. Where the record shows a cumulative significant impact to cultural resources, a FONSI is inappropriate.

Southern Utah Wilderness Alliance et al., 124 IBLA 162
(Oct. 1, 1992)

BLM properly approves a plan for the drilling of a series of holes for the purpose of identifying the presence and extent of lead mineralization where it has adequately considered the impact of such drilling and associated activity on the environment, and determined that, given certain mitigation measures, any impact will be insignificant. BLM need not consider the impact of full-scale mining where approval of drilling does not commit BLM to approve further mining.

Missouri Coalition for the Environment et al., 124 IBLA
211 (Oct. 23, 1992)

"Cumulative impact" is the impact on the environment that results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or persons undertake such other actions. An EA examining the cyanide retention qualities of a heap leach operation need not include a discussion of an exploration

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

FINDING OF NO SIGNIFICANT IMPACT--Continued

plan that, during the pendency of the appeal, is withdrawn by the operator.

Red Thunder, Inc., et al., 124 IBLA 267 (Nov. 3, 1992)

NATIONAL HISTORIC PRESERVATION ACT

APPLICABILITY

Where the Montana State Historic Preservation Office is aware that an area may possess traditional cultural values, owing to the presence of Native American fasting and vision questing sites there, but nevertheless concludes that no properties eligible for inclusion on the National Register of Historic Places were identified in the area, BLM is not required to comply with sec. 106 of the National Historic Preservation Act. Rather, it is adequate for BLM to address effects of gold mining on cultural values through its compliance with the American Indian Religious Freedom Act. BLM complies with the latter Act where it actively solicits the opinions of Native Americans, both individually and in tribal groups, and considers reasonable mitigating measures.

Red Thunder, Inc., et al., 124 IBLA 267 (Nov. 3, 1992)

NATIONAL PARK SERVICE

DONATIONS AND GIFTS

When unpatented mining claims have been donated to the NPS by quitclaim deed and the record before BLM discloses a dispute regarding the chain of title to the claims or the existence of encumbrances upon title to the claims, neither the regulations applicable to mining claims recordation nor the regulations governing acceptance of donated interests in real property authorizes BLM to adjudicate title to the claims and a decision purporting to do so is properly vacated.

David J. Bartoli, 123 IBLA 27 (Apr. 29, 1992)
99 I.D. 55

NOTICE

GENERALLY

A Government contest of a millsite claim is not subject to dismissal for failure to name all interested parties.

United States v. Loyall Fraker, 122 IBLA 24 (Jan. 3, 1992)

CONSTRUCTIVE NOTICE

It is proper for BLM to reject location notices for placer mining claims submitted for recordation under 43 CFR 3833.1-4(a) because the claimants failed to tender the proper service charge within 30 days from the date claimants were deemed to have constructively received a deficiency notice requiring such payment. The record establishes that the deficiency notice was

NOTICE--Continued

CONSTRUCTIVE NOTICE--Continued

addressed to and the post office properly attempted delivery to the claimants' last address of record.

Gerhard W. Befeld, Marie D. Befeld, 123 IBLA 118
(May 19, 1992)

OIL AND GAS

GENERALLY

A Federal oil and gas lessee is under an obligation to assume the expenses of placing any gas produced and sold into "marketable condition." No deduction from royalty is allowed for the expenses of gathering and compressing gas required to place it in marketable condition regardless of whether these costs are paid directly by the lessee or by a third party. The price of gas sold at the wellhead which has been reduced from the price of gas in marketable condition by the costs of gathering the gas and compressing it as required for marketing to a pipeline purchaser does not establish the value of the gas in marketable condition.

R. E. Yarbrough & Co., 122 IBLA 217 (Feb. 21, 1992)

PIPELINES

Rights-of-Ways

The MLA, as implemented by Departmental regulations, does not require rights-of-way for construction and operation of "production facilities." In the case of gas, under 43 CFR 2880.5(k), production facilities

OIL AND GAS--Continued

PIPELINES--Continued

Rights-of-Ways--Continued

include a lessee's or lease operator's gathering lines which are located on lease upstream from the point of delivery to a transportation pipeline.

Where pipelines on a Federal oil and gas lease (described by the lessee as "lateral lines") move lease production to a central accumulation point on each lease; where each such line connects directly to a gas well and brings gas by separate individual lines to a central point where the gas is delivered into a single line; and where the primary function of the lines is gathering, they are properly considered "gathering lines" under 43 CFR 2880.0-5(k).

It is incumbent upon BLM to examine the facts and circumstances of individual cases to determine where the point of delivery from production facilities to the transportation pipeline actually is. A decision by BLM establishing the point of delivery as the "approved production accounting measurement point" at the wellhead will be set aside where the record does not establish that delivery took place at that point.

Enron Oil & Gas Co., 122 IBLA 224 (Feb. 26, 1992)
99 I.D. 20

OIL AND GAS LEASES

(See also Mineral Leasing Act, Outer Continental Shelf Lands Act)

GENERALLY

It was proper for BLM to approve a notice of intent to conduct oil and gas geophysical exploration operations utilizing truck-mounted vibrating equipment and seismic wave-receiving stations after considering the environmental impact of the contemplated operations and

OIL AND GAS LEASES--Continued

GENERALLY--Continued

alternatives thereto (including the no-action alternative), and concluding that no significant impact would result. Under the facts of this case, there was no error in BLM's failure to consider the possible subsequent drilling of a proposed well in the project area in conjunction with geophysical exploration operations.

Southern Utah Wilderness Alliance, Utah Chapter, Sierra Club, 122 IBLA 165 (Feb. 7, 1992)

Proof that a Federal lease was being drained by a private lease and that complications during completion of a well on the lease required more than 30 days in order to complete initial testing justified allowance of flaring of gas from an oil well even though prior application to flare had not been sought.

There was insufficient evidence to establish that a Federal lease was being drained by a well on a private lease where no evidence was submitted to show that the Federal well experienced any decline in reservoir pressure when tested.

The burden to establish that there are engineering, geologic, or economic reasons to justify venting or flaring gas from an oil well rests with the lessee who appeals a decision that there has been avoidable waste as a result of such venting or flaring. Where no proof is offered by the lessee to support allegations that there was a danger of drainage, relief cannot be afforded. Arguments that assessment for avoidably lost gas were barred by laches or limitations of action cannot be considered favorably where the lessee was timely notified of an audit that indicated avoidable loss was occurring, even though subsequent review of the matter was protracted.

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Proper application of IM 87-652 required that BLM evaluate whether, if an application to flare gas had been made for oil wells produced by the lessee prior to flaring, the application would have been entitled to approval on the merits.

Current law requires that compensation for avoidably lost gas is to be limited to payment of royalty value.

Maxus Exploration Co., 122 IBLA 190 (Feb. 10, 1992)

A determination that approval of a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made; all relevant areas of environmental concern have been identified; and the final determination is reasonable in light of the environmental analysis. A party challenging the determination must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. The ultimate burden of proof is on the challenging party. Mere differences of opinion provide no basis for reversal. A BLM decision approving a proposal to conduct seismic oil and gas geophysical exploration will be set aside where the EA upon which the decision was based failed to consider the no-action alternative and inadequately analyzed the effects of the proposed activity on wildlife in the project area, and BLM failed to provide a public comment period on the EA.

Southern Utah Wilderness Alliance, 122 IBLA 334 (Mar. 11, 1992)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Before an assessment for noncompliance with a permit can be made under provision of 43 CFR 3163.1 (1988), BLM must give the affected oil and gas operator written notice of the violation and provide an opportunity to abate the violation. When, after a blowout was controlled, the operator was not notified that continued flaring of gas would not be allowed, a subsequent assessment for avoidably lost gas could not properly be assessed under Departmental regulation 43 CFR 3163.1 (1988).

"Unavoidably lost." Notice to Lessees and Operators 4A, Part II.C.(2), provides that gas escaping in blowouts must be considered "unavoidably lost," subject to specified exceptions, among which is the failure of the operator to take all reasonable measures to prevent or control the loss. When, before a blowout occurred, the operator failed to pressure-test well casing contrary to a provision of the Federal permit under which the well was entered, an assessment for avoidably lost gas under provisions of NTL-4A was proper because the operator had not taken all reasonable measures to prevent gas loss that occurred after the blowout was controlled.

Chuska Energy Co., 123 IBLA 321 (July 9, 1992)

A BLM decision that assumes all gas wells connected to a plant were connected because the production rates and distance to an existing pipeline were economically favorable, and therefore gas vented or flared was avoidably lost, will be set aside and remanded when the record is inadequate to determine whether it was uneconomic to capture the gas.

Western Production Co., 124 IBLA 111 (Sept. 21, 1992)

OIL AND GAS LEASES--Continued

APPLICATIONS

Generally

Filing a noncompetitive oil and gas lease offer when the lands are available for leasing does not establish a legal or equitable right to a lease if the land subsequently become unavailable for leasing by operation of law. Congress mandated that lands within the Ouachita National Forest be offered for competitive leasing even though valid noncompetitive lease offers may be outstanding. If lands were offered at a competitive sale and a bid in excess of the national minimum acceptable bid was received from a responsible qualified bidder then the pending noncompetitive offer to lease that tract was properly rejected.

William E. Dent, Jr., 122 IBLA 152 (Feb. 4, 1992)

A ROD and FONSI issued by a BLM Area Manager, which is based on an environmental record of review or an EA prepared in response to the filing of an APD an oil and gas well under 43 CFR 3162.3-1, is first subject to administrative review by a BLM State Director in accordance with 43 CFR 3165.3(b). An appeal to this Board of such a decision that has not been the subject of State Director review will be dismissed and the case remanded for referral to the appropriate State Director.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 283 (Mar. 5, 1992)

A decision approving an application for permit to drill an oil and gas well under 43 CFR 3162.3-1 is first subject to administrative review by the appropriate BLM State Director in accordance with 43 CFR 3165.3(b). Where an appeal to this Board from such a decision has not been the subject of State Director review, it will be dismissed.

Wyoming Wildlife Federation, 123 IBLA 392 (Aug. 7, 1992)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents

An oil and gas lease offer signed by an attorney-in-fact for lease applicants was not subject to rejection for failure to disclose the relationship between them contrary to 43 CFR 3102.4.

William J. Manville, Jr., 124 IBLA 257 (Nov. 3, 1992)

ASSIGNMENTS OR TRANSFERS

A purported assignee of a competitive oil and gas lease lacks standing to appeal from a BLM decision amending the lease to correct an erroneous acreage figure and requiring the lessee to pay additional first year's rental and minimum bonus bid depending on the revised figure, when the purported assignee has failed to sign the assignment document.

Stanley Energy, Inc., 122 IBLA 118 (Jan. 16, 1992)

Where BLM approves the assignment of the transfer of record title to an oil and gas lease from two co-lessees, who are co-principals on a lease bond, one of whom is also the operator of a well on the lease, to an assignee with a statewide bond, responsibility for performance of all lease obligations, including bonding, shifts, in accordance with 43 CFR 3106.7-2, to the assignee and its surety. A decision to terminate the period of liability on the lease bond is properly issued.

Where an operator provides bond coverage for a lease, upon transfer of its rights, the new operator must, in accordance with 43 CFR 3106.6-1, furnish an appropriate replacement bond or provide evidence of consent of the surety under the existing bond to become co-principal on such bond. However, where co-lessees, one of whom is the operator of a well on the lease, are

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

co-principals on the lease bond, and BLM approves a transfer of record title interest in the lease, the co-lessee/operator is not required to maintain the lease bond in the absence of the designation of a new operator. The reason is that upon approval of the assignment of the record title, the assignee and its surety become responsible for the performance of all lease obligations, including bonding.

R. E. Puckett, R. C. Altrogge, 124 IBLA 288 (Nov. 3, 1992)

Sec. 102(a) of FOGPMA, 30 U.S.C. § 1712(a) (1988), requires a lessee to notify the Secretary of the assignment of the obligation to pay royalty. Sec. 3(7) of FOGPMA, 30 U.S.C. § 1702(7) (1988), defines lessee as including any person who has been assigned an obligation to make a royalty or other payment required by a lease. Under secs. 102(a) and 3(7) of FOGPMA, for a person who holds no interest in a lease to be liable for the lessee's royalty payments, the lessee and the person must have agreed to an assignment of the obligation to pay royalty, and notice of that assignment or either evidence of or notice of an assignment, and filing a PIF, without more, does not render the person filing it a lessee under sec. 3(7) of FOGPMA, 30 U.S.C. § 1702(7) (1988). There must be a document assigning the obligation to make royalty payments or a contract or agreement stating this obligation.

The assignment of the obligation to make royalty payments is not related to an assignment of a lease or an interest in a lease that must be approved by BIA under 25 CFR 212.22.

The making of royalty payments and the filing of PIFs are not sufficient evidence to indicate an intent

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

to be bound as an agent by lessees' obligation to pay royalty.

Mesa Operating Ltd Partnership, 125 IBLA 28 (Dec. 31, 1992) 99 I.D. 272

BONDS

Confirmation by the bankruptcy court of a plan of reorganization under Chapter 11 of the Bankruptcy Code is binding on both the debtor and the creditors. Although BLM has the authority by regulation to increase the amount of bond coverage required of an oil and gas operator, an order of the bankruptcy court confirming the plan of reorganization of a Federal oil and gas lessee which expressly bars an increase in bond coverage as a condition of production is binding on the Department in the absence of modification thereof. A finding that an oil and gas lease in its extended term by reason of production terminated automatically for failure to produce lease wells within 60 days of notice to do so will be remanded where production was conditioned upon increased bond coverage expressly barred by order of the bankruptcy court.

Great Western Petroleum & Refining Co., 124 IBLA 16 (Aug. 19, 1992)

Where BLM approves the assignment of the transfer of record title to an oil and gas lease from two co-lessees, who are co-principals on a lease bond, one of whom is also the operator of a well on the lease, to an assignee with a statewide bond, responsibility for performance of all lease obligations, including bonding, shifts, in accordance with 43 CFR 3106.7-2, to the

OIL AND GAS LEASES--Continued

BONDS--Continued

assignee and its surety. A decision to terminate the period of liability on the lease bond is properly issued.

Where an operator provides bond coverage for a lease, upon transfer of its rights, the new operator must, in accordance with 43 CFR 3106.6-1, furnish an appropriate replacement bond or provide evidence of consent of the surety under the existing bond to become co-principal on such bond. However, where co-lessees, one of whom is the operator of a well on the lease, are co-principals on the lease bond, and BLM approves a transfer of record title interest in the lease, the co-lessee/operator is not required to maintain the lease bond in the absence of the designation of a new operator. The reason is that upon approval of the assignment of the record title, the assignee and its surety become responsible for the performance of all lease obligations, including bonding.

R. E. Puckett, R. C. Altrogge, 124 IBLA 288 (Nov. 3, 1992)

CANCELLATION

An oil and gas lease is properly cancelled where it was inadvertently issued in violation of the regulatory requirement to conform use authorizations to the approved RMP for lands officially designated as an area of critical environmental concern, with a prescription for no leasing because the area contains several Federally listed endangered and threatened plant species.

High Plains Petroleum Corp., 125 IBLA 24 (Dec. 29, 1992)

OIL AND GAS LEASES--Continued

CIVIL ASSESSMENTS AND PENALTIES

BLM may properly assess an operator \$500 for failure to abate three minor violations within the time prescribed where it fails to demonstrate by a preponderance of the evidence that BLM's determination was in error. Violation of Onshore Oil and Gas Order No. 3, requiring valves on equalizer and drain (or recycle) lines to be effectively sealed in a closed position during the production phase, is a minor violation.

Omimex Petroleum, Inc., 123 IBLA 1 (Apr. 7, 1992)

Assessments for the late reporting of royalties pursuant to 30 CFR 218.40 are properly distinguished from penalties assessed under sec. 109 of FOGDRA, 30 U.S.C. § 1719 (1988), and do not effectively increase the royalty rate designated in an oil and gas lease.

By choosing the method of delivery of its report of sales and royalty remittance (Form MMS-2014), the payor must accept the responsibility for and bear the consequences of that choice, including the possibility of delay in delivery or nondelivery of the report.

An assessment of \$10 per report for the late reporting of royalty on production pursuant to 30 CFR 218.40 will be affirmed where 30 CFR 210.52 requires the filing of a completed Form MMS-2014 by the end of the month following the production month and it appears from the record that the reports were filed late.

Linmar Petroleum Co., 123 IBLA 45 (May 6, 1992)

The Board will not overturn a BLM decision that an assessment for drilling a well without prior approval pursuant to 43 CFR 3163.1(e) (1989), should not be waived or reduced if the operator fails to demonstrate

OIL AND GAS LEASES--Continued

CIVIL ASSESSMENTS AND PENALTIES--Continued

that the decision was arbitrary or that it was not supported by the evidence.

Northland Royalty Operating Co., 123 IBLA 104 (May 14, 1992)

COMPENSATORY ROYALTY

An operator who obtains a lease that is being drained by his offending well becomes a common lessee and is presumed to have knowledge of the drainage. This knowledge is presumed from the date that the party becomes the common lessee. Any duty to drill an offset well or pay compensatory royalty would arise a reasonable time thereafter.

Once BLM has established that a tract is being drained by a common lessee, the ultimate burden of proof that a protective well would be uneconomic rests with the common lessee. If the cost of drilling and operating an offset well, based on the conditions at the time this duty is acquired, is greater than the value of the recovered oil and gas, there is no breach of the lessee's duty to prevent drainage.

In order for BLM to assess an operator/lessee compensatory royalty for a period of time when the operator/lessee was a stranger to the lease, BLM must show, for example, that it had provided written notice to the operator/lessee's predecessor in interest and that the operator/lessee could be considered to have taken the leases subject to that notice or that it had been made a condition of Departmental approval of the assignment.

Benson-Montin-Greer Drilling Corp., 123 IBLA 341
(July 15, 1992) 99 I.D. 115

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES

Departmental regulation 43 CFR 3120.1-3 provides that no action taken pursuant to regulations governing competitive oil and gas leasing in Subpart 3120 shall be suspended under 43 CFR 4.21(a), which would otherwise suspend the effect of decisions after appeal or while an appeal could be filed. Although BLM's authorized officer may suspend offering a particular lease parcel while a protest or appeal is considered, BLM properly refused to suspend sale of 37 lease parcels where objection was made on the day of sale but no reason was stated for the protest.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

A purported assignee of a competitive oil and gas lease lacks standing to appeal from a BLM decision amending the lease to correct an erroneous acreage figure and requiring the lessee to pay additional first year's rental and minimum bonus bid depending on the revised figure, when the purported assignee has failed to sign the assignment document.

Stanley Energy, Inc., 122 IBLA 118 (Jan. 16, 1992)

Filing a noncompetitive oil and gas lease offer when the lands are available for leasing does not establish a legal or equitable right to a lease if the land subsequently become unavailable for leasing by operation of law. Congress mandated that lands within the Ouachita National Forest be offered for competitive leasing even though valid noncompetitive lease offers may be outstanding. If lands were offered at a competitive sale and a bid in excess of the national minimum acceptable bid was received from a responsible qualified bidder then the pending noncompetitive offer to lease that tract was properly rejected.

William E. Dent, Jr., 122 IBLA 152 (Feb. 4, 1992)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

Departmental regulations governing competitive lease sales provide that the balance of a bonus bid must be submitted within 10 working days after a competitive lease sale date and that failure to timely submit the required payment will result in bid rejection. 43 CFR 3120.5-2(c), 3120.5-3(a).

Eastern American Energy Corp., 123 IBLA 300 (June 25, 1992)

DISCRETION TO LEASE

Filing a noncompetitive oil and gas lease offer when the lands are available for leasing does not establish a legal or equitable right to a lease if the land subsequently become unavailable for leasing by operation of law. Congress mandated that lands within the Ouachita National Forest be offered for competitive leasing even though valid noncompetitive lease offers may be outstanding. If lands were offered at a competitive sale and a bid in excess of the national minimum acceptable bid was received from a responsible qualified bidder then the pending noncompetitive offer to lease that tract was properly rejected.

William E. Dent, Jr., 122 IBLA 152 (Feb. 4, 1992)

DRAINAGE

An operator who obtains a lease that is being drained by his offending well becomes a common lessee and is presumed to have knowledge of the drainage. This knowledge is presumed from the date that the party becomes the common lessee. Any duty to drill an offset

OIL AND GAS LEASES--Continued

DRAINAGE--Continued

well or pay compensatory royalty would arise a reasonable time thereafter.

Once BLM has established that a tract is being drained by a common lessee, the ultimate burden of proof that a protective well would be uneconomic rests with the common lessee. If the cost of drilling and operating an offset well, based on the conditions at the time this duty is acquired, is greater than the value of the recovered oil and gas, there is no breach of the lessee's duty to prevent drainage.

In order for BLM to assess an operator/lessee compensatory royalty for a period of time when the operator/lessee was a stranger to the lease, BLM must show, for example, that it had provided written notice to the operator/lessee's predecessor in interest and that the operator/lessee could be considered to have taken the leases subject to that notice or that it had been made a condition of Departmental approval of the assignment.

Benson-Montin-Greer Drilling Corp., 123 IBLA 341
(July 15, 1992) 99 I.D. 115

DRILLING

A ROD and FONSI issued by a BLM Area Manager, which is based on an environmental record of review or an EA prepared in response to the filing of an APD on an oil and gas well under 43 CFR 3162.3-1, is first subject to administrative review by a BLM State Director in accordance with 43 CFR 3165.3(b). An appeal to this Board of such a decision that has not been the subject of State Director review will be dismissed and the case remanded for referral to the appropriate State Director.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 283 (Mar. 5, 1992)

OIL AND GAS LEASES--Continued

DRILLING--Continued

A decision approving an application for permit to drill an oil and gas well under 43 CFR 3162.3-1 is first subject to administrative review by the appropriate BLM State Director in accordance with 43 CFR 3165.3(b). Where an appeal to this Board from such a decision has not been the subject of State Director review, it will be dismissed.

Wyoming Wildlife Federation, 123 IBLA 392 (Aug. 7, 1992)

EXPIRATION

An operator of an oil and gas lease is responsible for reclamation of land leased for oil and gas purposes, even after expiration of the lease and even where the surface estate is privately owned. Such reclamation includes the restoration of any area within the lease boundaries disturbed by lease operations to the condition in which it was found prior to surface-disturbing activities.

Glen Morgan, 122 IBLA 36 (Jan. 7, 1992)

An oil and gas lease in its extended term by reason of production which embraces a well capable of producing oil or gas in paying quantities expires by operation of law when production ceases and, thereafter, the lessee fails to produce the well upon 60 days' notice to place the well in production. Termination of the lease by operation of law in such circumstances is properly distinguished from cancellation of an oil and gas lease for violation of the lease terms, regulations, or statutes. No judicial action is required to effect termination by operation of law.

An oil and gas lease in its extended term by reason of production which embraces a well capable of producing oil or gas in paying quantities expires by operation of law when production ceases and, thereafter, the lessee

OIL AND GAS LEASES--Continued

EXPIRATION--Continued

fails to produce the well upon 60 days' notice to place the well in production. Termination of the lease in such circumstances occurs by operation of law and does not involve any judicial or administrative proceeding. Accordingly, the termination of the lease does not involve an action or proceeding against the debtor or an act to obtain property of the debtor which would be barred by the automatic stay provided by the Bankruptcy Code, 11 U.S.C. § 362(a) (1988), upon the filing of a petition in bankruptcy.

Confirmation by the bankruptcy court of a plan of reorganization under Chapter 11 of the Bankruptcy Code is binding on both the debtor and the creditors. Although BLM has the authority by regulation to increase the amount of bond coverage required of an oil and gas operator, an order of the bankruptcy court confirming the plan of reorganization of a Federal oil and gas lessee which expressly bars an increase in bond coverage as a condition of production is binding on the Department in the absence of modification thereof. A finding that an oil and gas lease in its extended term by reason of production terminated automatically for failure to produce lease wells within 60 days of notice to do so will be remanded where production was conditioned upon increased bond coverage expressly barred by order of the bankruptcy court.

Great Western Petroleum & Refining Co., 124 IBLA 16
(Aug. 19, 1992)

EXTENSIONS

An oil and gas lease in its extended term by reason of production which embraces a well capable of producing oil or gas in paying quantities expires by operation of law when production ceases and, thereafter, the lessee fails to produce the well upon 60 days' notice to place the well in production. Termination of the lease by

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

operation of law in such circumstances is properly distinguished from cancellation of an oil and gas lease for violation of the lease terms, regulations, or statutes. No judicial action is required to effect termination by operation of law.

Great Western Petroleum & Refining Co., 124 IBLA 16
(Aug. 19, 1992)

INCIDENTS OF NONCOMPLIANCE

BLM may properly assess an operator \$500 for failure to abate three minor violations within the time prescribed where it fails to demonstrate by a preponderance of the evidence that BLM's determination was in error. Violation of Onshore Oil and Gas Order No. 3, requiring valves on equalizer and drain (or recycle) lines to be effectively sealed in a closed position during the production phase, is a minor violation.

Omimex Petroleum, Inc., 123 IBLA 1 (Apr. 7, 1992)

The Board will not overturn a BLM decision that an assessment for drilling a well without prior approval pursuant to 43 CFR 3163.1(e) (1989), should not be waived or reduced if the operator fails to demonstrate that the decision was arbitrary or that it was not supported by the evidence.

Northland Royalty Operating Co., 123 IBLA 104 (May 14, 1992)

OIL AND GAS LEASES--Continued

INCIDENTS OF NONCOMPLIANCE--Continued

Before an assessment for noncompliance with a permit can be made under provision of 43 CFR 3163.1 (1988), BLM must give the affected oil and gas operator written notice of the violation and provide an opportunity to abate the violation. When, after a blowout was controlled, the operator was not notified that continued flaring of gas would not be allowed, a subsequent assessment for avoidably lost gas could not properly be assessed under Departmental regulation 43 CFR 3163.1 (1988).

Chuska Energy Co., 123 IBLA 321 (July 9, 1992)

LANDS SUBJECT TO

A protest against sale of oil and gas leases that contends the sale should not proceed because the land to be leased has wilderness characteristics is properly dismissed because the final administrative determination that the land was not wilderness in character was made in 1985 when BLM and the Board decided not to include the land at issue in a WSA.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

OFFERS TO LEASE

Filing a noncompetitive oil and gas lease offer when the lands are available for leasing does not establish a legal or equitable right to a lease if the land subsequently become unavailable for leasing by operation of law. Congress mandated that lands within the Ouachita National Forest be offered for competitive leasing even though valid noncompetitive lease offers may be outstanding. If lands were offered at a competitive sale and a bid in excess of the national minimum acceptable bid was received from a responsible qualified

OIL AND GAS LEASES--Continued

OFFERS TO LEASE--Continued

bidder then the pending noncompetitive offer to lease that tract was properly rejected.

William E. Dent, Jr., 122 IBLA 152 (Feb. 4, 1992)

It is proper for BLM to reject a noncompetitive oil and gas lease offer for land included in a competitive oil and gas lease sale held the previous day when a bid had been received at the competitive sale.

William C. Francis, 124 IBLA 119 (Sept. 23, 1992)

An oil and gas lease offer signed by an attorney-in-fact for lease applicants was not subject to rejection for failure to disclose the relationship between them contrary to 43 CFR 3102.4.

William J. Manville, Jr., 124 IBLA 257 (Nov. 3, 1992)

PRODUCTION

Pursuant to 43 CFR 3162.3-4(a), an operator shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by BLM, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a production well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities, unless BLM shall approve the use of the well as a service well for injection to recover additional oil or gas or for subsurface disposal of produced water. An order to plug and abandon a well will be affirmed where the record shows that the well has not produced for more than a decade and the operator's plans for a waterflood

OIL AND GAS LEASES--Continued

PRODUCTION--Continued

program have not been implemented despite over 18 months of delay awaiting favorable economic conditions.

ERC Industries, 124 IBLA 331 (Nov. 17, 1992)

REINSTATEMENT

Pursuant to 30 U.S.C. § 188(b) (1988), when the lessee fails to pay the required rental on or before the anniversary date of the lease, and there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1988), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay was justifiable or not due to a lack of reasonable diligence. When the failure to timely pay the rental was due to the lessee's own neglect, the failure to pay rent timely is neither justifiable nor demonstrative of reasonable diligence. Therefore, a petition for reinstatement under 30 U.S.C. § 188(c) (1988), must be rejected.

Albert F. Porfilio, 123 IBLA 138 (May 22, 1992)

When a competitive oil and gas lease fails to pay annual rental on or before the anniversary date of its lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law. The Department's regulation at 43 CFR 3103.1-2(2) provides that second-year and subsequent rentals are to be paid to MMS at its Royalty Management Program/BRASS in Denver, Colorado. Payment sent to BLM's Wyoming State Office will not constitute a proper tender of rental.

Mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. The

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

explanation for failure to pay on or before the anniversary date was that the payment had initially been mailed to the wrong office by mistake. This does not demonstrate that the failure to submit the payment in a timely manner was not due to a lack of reasonable diligence.

Petro Resources, Inc., 123 IBLA 310 (June 26, 1992)

A petition for class I reinstatement of an oil and gas lease is properly denied where the rental payment was received by BLM after the anniversary date, and the lessee, having paid the rental within 20 days following the lease anniversary date, fails to establish that the failure to pay the rental on the anniversary date was justified or not due to a lack of reasonable diligence.

Petro-Hunt Corp., 124 IBLA 318 (Nov. 4, 1992)

RENTALS

Under sec. 31(b) of the MLA, as amended, oil and gas leases are subject to automatic termination by operation of law for failure to pay the annual rental in advance by the lease anniversary date. 30 U.S.C. § 188(b) (1988). The automatic termination provision does not apply to rental charges becoming due at a time other than the anniversary date due to the termination of a suspension of the lease.

Andrew Helal, 122 IBLA 325 (Mar. 11, 1992)

OIL AND GAS LEASES--Continued

ROYALTIES

Generally

Where a lessee has a contractual right to receive reimbursement for ad valorem taxes levied by a state on gas produced and sold under the contract, MMS may properly determine that the value of production to which the royalty rate applies includes the purchase price plus the tax reimbursements, and it may collect additional royalty where royalty payments were made using a value that excluded the tax reimbursements.

Triqq Drilling Co., Inc., 122 IBLA 50 (Jan. 7, 1992)

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

As a general rule, reasonable value for the purpose of calculating royalties due to the United States will be the highest price paid for the major portion of like quality products produced or sold from the same field or area or the gross proceeds actually received by the lessee, whichever is greater. When the lessee fails to receive the posted upper-tier price for the new oil produced from its leases because that oil was not timely certified as upper-tier oil, royalties based on the posted upper-tier price are due, notwithstanding the lessee's assertions that it did not have sufficient information to know the percentage of new oil subject to the upper-tier price; that it could not control the certification filing procedures that would have enabled it to obtain the upper-tier price; that it relied on the unit operator to fulfill its responsibilities in this regard; and that it diligently pursued litigation against the unit operator to recover the upper-tier price which litigation was ultimately settled for far less than the posted price of the upper-tier oil.

Anadarko Petroleum Corp., 122 IBLA 141 (Feb. 3, 1992)

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

Generally--Continued

Proof that a Federal lease was being drained by a private lease and that complications during completion of a well on the lease required more than 30 days in order to complete initial testing justified allowance of flaring of gas from an oil well even though prior application to flare had not been sought.

There was insufficient evidence to establish that a Federal lease was being drained by a well on a private lease where no evidence was submitted to show that the Federal well experienced any decline in reservoir pressure when tested.

The burden to establish that there are engineering, geologic, or economic reasons to justify venting or flaring gas from an oil well rests with the lessee who appeals a decision that there has been avoidable waste as a result of such venting or flaring. Where no proof is offered by the lessee to support allegations that there was a danger of drainage, relief cannot be afforded. Arguments that assessment for avoidably lost gas were barred by laches or limitations of action cannot be considered favorably where the lessee was timely notified of an audit that indicated avoidable loss was occurring, even though subsequent review of the matter was protracted.

Proper application of IM 87-652 required that BLM evaluate whether, if an application to flare gas had been made for oil wells produced by the lessee prior to flaring, the application would have been entitled to approval on the merits.

Maxus Exploration Co., 122 IBLA 190 (Feb. 10, 1992)

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

Generally--Continued

A Federal oil and gas lessee is under an obligation to assume the expenses of placing any gas produced and sold into "marketable condition." No deduction from royalty is allowed for the expenses of gathering and compressing gas required to place it in marketable condition regardless of whether these costs are paid directly by the lessee or by a third party. The price of gas sold at the wellhead which has been reduced from the price of gas in marketable condition by the costs of gathering the gas and compressing it as required for marketing to a pipeline purchaser does not establish the value of the gas in marketable condition.

R. E. Yarbrough & Co., 122 IBLA 217 (Feb. 21, 1992)

"Marketable condition rule." A Federal oil and gas lessee is under an obligation to assume the expenses of placing any gas produced and sold into "marketable condition." No deduction from royalty is allowed for the expenses of compressing gas required to place it in marketable condition regardless of whether these costs are paid directly by the lessee or by a third party. The price of gas sold at the wellhead which has been reduced from the price of gas in marketable condition by the costs of compressing it as required for marketing to a pipeline purchaser does not establish the value of the gas in marketable condition.

Beartooth Oil & Gas Co., 122 IBLA 267 (Mar. 3, 1992)

Assessments for the late reporting of royalties pursuant to 30 CFR 218.40 are properly distinguished from penalties assessed under sec. 109 of FOGDRA, 30 U.S.C. § 1719 (1988), and do not effectively increase the royalty rate designated in an oil and gas lease.

By choosing the method of delivery of its report of sales and royalty remittance (Form MMS-2014), the payor

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

Generally--Continued

must accept the responsibility for and bear the consequences of that choice, including the possibility of delay in delivery or nondelivery of the report.

Linmar Petroleum Co., 123 IBLA 45 (May 6, 1992)

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

Benson-Montin-Greer Drilling Corp., 123 IBLA 341
(July 15, 1992) 99 I.D. 115

A BLM decision that assumes all gas wells connected to a plant were connected because the production rates and distance to an existing pipeline were economically favorable, and therefore gas vented or flared was avoidably lost, will be set aside and remanded when the record is inadequate to determine whether it was uneconomic to capture the gas.

Western Production Co., 124 IBLA 111 (Sept. 21, 1992)

MMS properly required a Federal and Indian oil and gas lessee to review royalty accounts in order to determine whether royalty underpayment was caused by exclusion of state tax reimbursements from gross proceeds of sales of oil and gas.

The Federal and Indian lessee was properly required to compute and pay additional royalties where there was

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

Generally--Continued

evidence of systematic exclusion of tax reimbursements in reporting production proceeds for royalty purposes.

BHP Petroleum (Americas) Inc., 124 IBLA 185 (Oct. 14, 1992)

Interest

Under provision of Departmental regulation 30 CFR 206.152(j), it is a defense to a claim for late payment interest charges that a lessee exercised reasonable business judgment when payment was initially made, albeit that future events caused a deficit in the payment to occur. While 30 CFR 206.152(j) was not in effect in 1986 when the payment at issue was made, it is Departmental policy to give effect to policy changes in pending cases when to do so would not operate to the detriment of any party.

If a Federal lessee contends that the policy established by 30 CFR 206.152(j) should be applied to determine whether late payment charges are owed for royalty payments made before contract modification increased product valuation, the lessee must document that reasonable measures were timely taken to obtain settlement. The burden to show entitlement to the benefit of the regulation rests with the lessee, and the fact that a favorable settlement was ultimately reached is not enough, alone, to establish that reasonable measures were timely taken so as to excuse late payment charges, where payment at the lower rate continued for 3 years pending resolution of the valuation dispute.

Anadarko Petroleum Corp., 123 IBLA 361 (July 21, 1992)

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

Interest--Continued

Under 30 CFR 218.54, MMS is authorized to assess a late payment (interest) charge if royalty payments for oil and gas leases are unpaid or underpaid on the date the amounts are due. Under 30 CFR 218.50(a), royalty payments are normally due at the end of the month after the month in which the oil and/or gas is produced and sold. However, where a judicial decision is rendered holding that a higher price for certain OCS gas may be retroactively collected, the date the additional royalty on the retroactive payment is due is properly determined by using the date the operator applied with FERC for an amendment of its certificates authorizing collection of the higher price for many of its other leases, in the absence of a convincing showing that it was reasonably prevented from doing so.

OXY, USA, Inc., 123 IBLA 383 (Aug. 5, 1992)

Where late payment of royalty on a lease results from a mistake by a Federal offshore lessee in paying between two separate lease accounts, MMS properly assesses a late payment charge although the second lease account was overpaid by the amount of the underpayment on the first lease.

Columbia Gas Development Corp., 123 IBLA 395 (Aug. 7, 1992)

Payments

Current law requires that compensation for avoidably lost gas is to be limited to payment of royalty value.

Maxus Exploration Co., 122 IBLA 190 (Feb. 10, 1992)

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

Payments--Continued

MMS may properly require a Federal gas lessee to furnish a report derived from information in corporate records concerning royalty payments, even if some of the documents needed to produce the report are over 6 years old.

Discovery of an anomaly in royalty reporting arising during refund proceedings on a Federal lease provided a reasonable foundation for an investigation into the possibility that other similar errors had also occurred.

MMS may properly require a Federal gas lessee to furnish a report concerning identified payment errors to be prepared from corporate royalty payment records. If regulations currently in effect do not require a payor to research and analyze payment records and report specified reporting errors, special orders providing adequate guidance for reporting will provide a foundation that permits the required report to be completed.

Amoco Production Co., 123 IBLA 278 (June 18, 1992)

"Unavoidably lost." Notice to Lessees and Operators 4A, Part II.C.(2), provides that gas escaping in blowouts must be considered "unavoidably lost," subject to specified exceptions, among which is the failure of the operator to take all reasonable measures to prevent or control the loss. When, before a blowout occurred, the operator failed to pressure-test well casing contrary to a provision of the Federal permit under which the well was entered, an assessment for unavoidably lost gas under provisions of NTL-4A was proper because the operator had not taken all reasonable measures to prevent gas loss that occurred after the blowout was controlled.

Chuska Energy Co., 123 IBLA 321 (July 9, 1992)

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

Payments--Continued

A lessee cannot generally avoid its responsibility to make timely payment to the Government of royalties because of difficulties in obtaining payments from and/or disputes with the purchaser, where there is no evidence indicating that the purchaser was not legally required to make the payment. Where the purchaser initially asserted that terms of its contract barred collection by the lessee of additional monies, but eventually capitulated and paid not only those additional monies to the lessee, but also late payment charges dating back to its receipt of the lessee's initial bill, the lessee may not avoid payment of late payment charges to the Government.

OXY, USA, Inc., 123 IBLA 383 (Aug. 5, 1992)

FERC Order No. 94 reimbursements paid to a lessee by a pipeline purchaser of gas from OCS oil and gas leases for certain production-related expenses, not included in the ceiling price for delivered gas, may be considered part of the lessee's gross proceeds for purposes of calculation of royalties. A request for a refund of royalties paid on such reimbursements may be properly denied.

Pogo Producing Co., 124 IBLA 76 (Sept. 9, 1992)

Sec. 102(a) of FOGPMA, 30 U.S.C. § 1712(a) (1988), requires a lessee to notify the Secretary of the assignment of the obligation to pay royalty. Sec. 3(7) of FOGPMA, 30 U.S.C. § 1702(7) (1988), defines lessee as including any person who has been assigned an obligation to make a royalty or other payment required by a lease. Under secs. 102(a) and 3(7) of FOGPMA, for a person who holds no interest in a lease to be liable for the lessee's royalty payments, the lessee and the person must have agreed to an assignment of the obligation to pay royalty, and notice of that assignment or either

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

Payments--Continued

evidence of or notice of an assignment, and filing a PIF, without more, does not render the person filing it a lessee under sec.3(7) of FOGPMA, 30 U.S.C. § 1702(7) (1988). There must be a document assigning the obligation to make royalty payments or a contract or agreement stating this obligation.

The assignment of the obligation to make royalty payments is not related to an assignment of a lease or an interest in a lease that must be approved by BIA under 25 CFR 212.22.

The making of royalty payments and the filing of PIFs are not sufficient evidence to indicate an intent to be bound as an agent by lessees' obligation to pay royalty.

Mesa Operating Ltd Partnership, 125 IBLA 28 (Dec. 31, 1992) 99 I.D. 272

STOCK-RAISING HOMESTEAD ACT OF 1916

An operator of an oil and gas lease is responsible for reclamation of land leased for oil and gas purposes, even after expiration of the lease and even where the surface estate is privately owned. Such reclamation includes the restoration of any area within the lease boundaries disturbed by lease operations to the condition in which it was found prior to surface-disturbing activities.

Glen Morgan, 122 IBLA 36 (Jan. 7, 1992)

OIL AND GAS LEASES--Continued

TERMINATION

Under sec. 31(b) of the MLA, as amended, oil and gas leases are subject to automatic termination by operation of law for failure to pay the annual rental in advance by the lease anniversary date. 30 U.S.C. § 188(b) (1988). The automatic termination provision does not apply to rental charges becoming due at a time other than the anniversary date due to the termination of a suspension of the lease.

Andrew Helal, 122 IBLA 325 (Mar. 11, 1992)

Pursuant to 30 U.S.C. § 188(b) (1988), when the lessee fails to pay the required rental on or before the anniversary date of the lease, and there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1988), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay was justifiable or not due to a lack of reasonable diligence. When the failure to timely pay the rental was due to the lessee's own neglect, the failure to pay rent timely is neither justifiable nor demonstrative of reasonable diligence. Therefore, a petition for reinstatement under 30 U.S.C. § 188(c) (1988), must be rejected.

Albert F. Porfilio, 123 IBLA 138 (May 22, 1992)

When a competitive oil and gas lease fails to pay annual rental on or before the anniversary date of its lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law. The Department's regulation at 43 CFR 3103.1-2(2) provides that second-year and subsequent rentals are to be paid to MMS at its Royalty Management Program/BRASS in Denver, Colorado.

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Payment sent to BLM's Wyoming State Office will not constitute a proper tender of rental.

Petro Resources, Inc., 123 IBLA 310 (June 26, 1992)

An oil and gas lease in its extended term by reason of production which embraces a well capable of producing oil or gas in paying quantities expires by operation of law when production ceases and, thereafter, the lessee fails to produce the well upon 60 days' notice to place the well in production. Termination of the lease by operation of law in such circumstances is properly distinguished from cancellation of an oil and gas lease for violation of the lease terms, regulations, or statutes. No judicial action is required to effect termination by operation of law.

An oil and gas lease in its extended term by reason of production which embraces a well capable of producing oil or gas in paying quantities expires by operation of law when production ceases and, thereafter, the lessee fails to produce the well upon 60 days' notice to place the well in production. Termination of the lease in such circumstances occurs by operation of law and does not involve any judicial or administrative proceeding. Accordingly, the termination of the lease does not involve an action or proceeding against the debtor or an act to obtain property of the debtor which would be barred by the automatic stay provided by the Bankruptcy Code, 11 U.S.C. § 362(a) (1988), upon the filing of a petition in bankruptcy.

Confirmation by the bankruptcy court of a plan of reorganization under Chapter 11 of the Bankruptcy Code is binding on both the debtor and the creditors. Although BLM has the authority by regulation to increase the amount of bond coverage required of an oil and gas operator, an order of the bankruptcy court confirming the plan of reorganization of a Federal oil and gas lessee which expressly bars an increase in bond coverage as a condition of production is binding on the Department in the absence of modification thereof. A

OIL AND GAS LEASES--Continued

TERMINATION--Continued

finding that an oil and gas lease in its extended term by reason of production terminated automatically for failure to produce lease wells within 60 days of notice to do so will be remanded where production was conditioned upon increased bond coverage expressly barred by order of the bankruptcy court.

Great Western Petroleum & Refining Co., 124 IBLA 16 (Aug. 19, 1992)

OUTER CONTINENTAL SHELF LANDS ACT (See also Oil & Gas Leases)

OIL AND GAS LEASES

FERC Order No. 94 reimbursements paid to a lessee by a pipeline purchaser of gas from OCS oil and gas leases for certain production-related expenses, not included in the ceiling price for delivered gas, may be considered part of the lessee's gross proceeds for purposes of calculation of royalties. A request for a refund of royalties paid on such reimbursements may be properly denied.

Pogo Producing Co., 124 IBLA 76 (Sept. 9, 1992)

REFUNDS

Sec. 10 of OCSLA, 43 U.S.C. § 1339 (1988), authorizes the issuance of refunds for royalty overpayments only where the request for a refund is made within 2 years of the date that the overpayment is received.

Hamilton Brothers Oil Co., 123 IBLA 299 (June 8, 1992)

OUTER CONTINENTAL SHELF LANDS ACT--Continued

REFUNDS--Continued

Sec. 10 of the OCSLA, 43 U.S.C. § 1339 (1988), authorizes the issuance of refunds for royalty overpayments only where the request for a refund is filed within 2 years of the making of the payment.

Shell Offshore Inc., 124 IBLA 206 (Oct. 22, 1992)

A protective claim for a refund of royalties that does not state the reasons why a refund is sought, i.e., that does not state why the lessee believes royalties have been paid in excess of that required by law, is not a request for repayment within the meaning of sec. 10 of the OCSLA, 43 U.S.C. § 1339 (1988).

Mesa Operating Ltd Partnership, 125 IBLA 1 (Dec. 10, 1992)

Sec. 10 of the OCSLA, 43 U.S.C. § 1339 (1988), authorizes the issuance of refunds for royalty overpayments only where the request for a refund is made within 2 years of the date that the overpayment is received.

OXY USA Inc., 125 IBLA 7 (Dec. 10, 1992)

PATENTS OF PUBLIC LANDS

CORRECTIONS

The authority to amend conveyancing documents described at 43 U.S.C. § 1746 (1988), and 43 CFR Subpart 1865, does not include authority to amend a tentative approval which legislatively conveyed selected land

PATENTS OF PUBLIC LANDS--Continued

CORRECTIONS--Continued

to the State of Alaska, unless the State requests the amendment or concurs.

Northwest Alaska Pipeline Co. (On Reconsideration III),
9 OHA 143 (Mar. 24, 1992) 99 I.D. 31

EFFECT

When a patent is issued, title to the lands is transferred from the United States, and the Department of the Interior no longer has jurisdiction to adjudicate the right of private parties to the land.

Eddie S. Beroldo, Robert L. Miller, Jo Ann Miller,
123 IBLA 156 (May 28, 1992)

PAYMENTS

(See also Accounts)

GENERALLY

Under provision of Departmental regulation 30 CFR 206.152(j), it is a defense to a claim for late payment interest charges that a lessee exercised reasonable business judgment when payment was initially made, albeit that future events caused a deficit in the payment to occur. While 30 CFR 206.152(j) was not in effect in 1986 when the payment at issue was made, it is Departmental policy to give effect to policy changes in pending cases when to do so would not operate to the detriment of any party.

If a Federal lessee contends that the policy established by 30 CFR 206.152(j) should be applied to determine whether late payment charges are owed for royalty payments made before contract modification increased

PAYMENTS--Continued

GENERALLY--Continued

product valuation, the lessee must document that reasonable measures were timely taken to obtain settlement. The burden to show entitlement to the benefit of the regulation rests with the lessee, and the fact that a favorable settlement was ultimately reached is not enough, alone, to establish that reasonable measures were timely taken so as to excuse late payment charges, where payment at the lower rate continued for 3 years pending resolution of the valuation dispute.

Anadarko Petroleum Corp., 123 IBLA 361 (July 21, 1992)

POTASSIUM LEASES AND PERMITS (See also Mineral Leasing Act)

ROYALTIES

It is proper for MMS to assess the full amount of the minimum royalty in lieu of production from a potassium lease for the calendar year in which the lease relinquishment was filed, without pro-rata reduction.

Earth Sciences, Inc., 123 IBLA 369 (July 23, 1992)

POWERSITE LANDS

The Secretary has determined that lands involved in powersites were withdrawn by sec. 11(a)(1) of ANSCA, 43 U.S.C. § 1610(a)(1) (1988), and are selectable by Native corporations without the reservation provided under sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1988). This determination applies to lands within previously opened powersites and to land

POWERSITE LANDS--Continued

remaining in powersite withdrawals when ANCSA was enacted.

Alaska Power Administration (On Reconsideration),
123 IBLA 109 (May 18, 1992)

Locators of claims on land opened under 30 U.S.C. § 621(a) (1988), have been required by 30 U.S.C. § 623 (1988), to file copies of their location notices with BLM within 1 year after Aug. 11, 1955, for all locations previously made, or within 60 days of location for locations thereafter made.

The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1988), authorizes the location and patent of mining claims on public lands withdrawn for power purposes. However, the Department may hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land and may issue an order providing for one of the following three alternatives: (1) a complete prohibition on placer mining; (2) permission to engage in placer mining upon the condition that the locator shall restore the surface of the claim; or (3) a general permission to engage in placer mining.

Where a copy of the notice of location of a mining claim on land withdrawn for powersite purposes was not recorded with BLM within the time prescribed by 30 U.S.C. § 623 (1988), a notice of intent from BLM to conduct a hearing under sec. 621(b) will not be considered untimely if the notice of intent was issued within 60 days after receipt of some affirmative acknowledgement by the owner of the claim that the claim was subject to that provision of the Act.

To determine whether mining would "substantially interfere" with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1988), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the

POWERSITE LANDS--Continued

benefits of mining outweigh the benefits from other uses.

In making a determination whether placer mining operations would substantially interfere with other uses of powersite lands, the party who seeks to restrict or prohibit placer mining bears the initial burden of presenting a prima facie case. The burden then shifts to the mining claimant to overcome the case so proved by a preponderance of the evidence.

United States v. Phyrne Brown, 124 IBLA 247 (Nov. 2, 1992)

PRACTICE BEFORE THE DEPARTMENT (See also Rules of Practice)

PERSONS QUALIFIED TO PRACTICE

Practice before the Interior Board of Land Appeals is controlled by 43 CFR 1.3. To the extent it is brought by a person who does not fall within any of the categories of persons authorized to practice by 43 CFR 1.3, an appeal is subject to dismissal.

High Plains Petroleum Corp., 125 IBLA 24 (Dec. 29, 1992)

PUBLIC LANDS

(See also Accretion, Avulsion, Boundaries, Reliction, Surveys of Public Lands)

ADMINISTRATION

A BLM decision to implement a RMP by reintroducing pronghorn antelope onto public lands pursuant to a cooperative agreement with the State will be affirmed on appeal if the decision is based on a consideration of all relevant factors, including the threat of damage to adjacent private land resources, and is supported by the record, absent a showing of clear reasons for modification or reversal.

Lands of Sierra, Inc., 125 IBLA 15 (Dec. 17, 1992)

SPECIAL USE PERMITS

The Board will not substitute its judgment for that of the duly authorized BLM official exercising discretion to reject a special recreation permit application on the ground that it conflicts with BLM objectives, responsibilities, or program for management of the public lands involved where the facts of record support the decision. However, where two criminal convictions which were substantially relied upon as a basis for the BLM decision are reversed on appeal subsequent to the BLM decision, and the record contains little factual detail of the basis for rejection, the case is properly remanded.

Red Rock Hounds, Inc., 123 IBLA 314 (June 29, 1992)

The number of passenger days allocated to a holder of a commercial special recreation permit was properly reduced from 200 to 190 days for lack of use under a

PUBLIC LANDS--Continued

SPECIAL USE PERMITS--Continued

permit provision establishing a mechanism whereby past performance was to be used to fix passenger allocations.

Colorado River & Trail Expeditions, Inc., 123 IBLA 374
(July 23, 1992)

Under sec. 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1988), and the implementing regulations in 43 CFR Subpart 2920, BLM has discretion to reject a proposal for use of lands which conflicts with BLM policy for management of the public lands involved. BLM properly rejects a proposal for a permit authorizing the use of assault weapons on public lands where such rejection is based on the State Director's IM No. CA-90-155 in which he establishes a policy of closing BLM lands in California to the possession of assault weapons as defined by State law.

Where, under the authority of the Secretary of the Interior to issue permits pursuant to sec. 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1988), and 43 CFR Subpart 2920, BLM rejects a proposal for a permit authorizing the use of assault weapons on public lands based on the State Director's IM No. CA-90-155 in which he establishes a policy of closing BLM land in California to the possession of assault weapons as defined by State law, on challenging that determination must provide compelling reasons for modification or reversal. Failure to do so will result in the determination being affirmed on appeal when it is supported by the record.

Organized Sportsmen of Lassen County, 124 IBLA 325
(Nov. 6, 1992)

RECLAMATION HOMESTEADS

(See also Homesteads (Ordinary))

Where BLM determines, prior to the filing of satisfactory reclamation final proof, that land within a reclamation homestead entry is valuable for oil and gas, the entryman may petition for reclassification of the land as not valuable for oil and gas in accordance with 43 CFR 2093.3(d). If that petition is denied, the entryman is to be offered the opportunity to request a hearing. At such a hearing, the entryman has the burden of showing that the land is not valuable for oil and gas.

Jaye W. & Linda L. Johnson, 124 IBLA 196 (Oct. 20, 1992)

RECREATION AND PUBLIC PURPOSES ACT

It is proper for BLM to reject an application to amend an existing F&PP lease to permit substantial expansion of a solid-waste management station for collection of household refuse for transfer to a sanitary landfill because the intended expansion is contrary to existing BLM policy restricting authorization of sites for solid-waste disposal and related purposes to FLPMA sales and exchanges pending implementation of the R&PP Amendment Act of 1988, P.L. 100-648, 102 Stat. 3813.

Clark County, Nevada, 123 IBLA 150 (May 28, 1992)

REGULATIONS

(See also Administrative Procedure)

GENERALLY

The Board of Indian Appeals does not have authority to declare a duly promulgated Departmental regulation invalid.

Diedre Wilson v. Acting Portland Area Director, Bureau of Indian Affairs, 21 IBIA 188 (Feb. 14, 1992)

The Board of Indian Appeals does not have authority to declare an act of Congress unconstitutional or a duly promulgated Departmental regulation invalid.

Estates of Evan Gillette, Sr., & Lizzie Gillette/Yellow Bird/Bellanger/Paint/Bedell, aka Elizabeth Burdell, 22 IBIA 133 (June 18, 1992)

FORCE AND EFFECT AS LAW

Proper application of IM 87-652 required that BLM evaluate whether, if an application to flare gas had been made for oil wells produced by the lessee prior to flaring, the application would have been entitled to approval on the merits.

Maxus Exploration Co., 122 IBLA 190 (Feb. 10, 1992)

Where pipelines on a Federal oil and gas lease (described by the lessee as "lateral lines") move lease production to a central accumulation point on each lease; where each such line connects directly to a gas well and brings gas by separate individual lines to a central point where the gas is delivered into a single

REGULATIONS--Continued

FORCE AND EFFECT AS LAW--Continued

line; and where the primary function of the lines is gathering, they are properly considered "gathering lines" under 43 CFR 2880.0-5(k).

It is incumbent upon BLM to examine the facts and circumstances of individual cases to determine where the point of delivery from production facilities to the transportation pipeline actually is. A decision by BLM establishing the point of delivery as the "approved production accounting measurement point" at the wellhead will be set aside where the record does not establish that delivery took place at that point.

Enron Oil & Gas Co., 122 IBLA 224 (Feb. 26, 1992)
99 I.D. 20

An agency may establish a rule of law by adjudication. If such a rule has not been established by adjudication, then, in order for it to have the force and effect of law and be binding on the agency as well as the public, it must be a substantive rule affecting individual rights and obligations that has been issued by the agency pursuant to statutory authority and promulgated in accordance with the rulemaking requirements of the APA, 5 U.S.C. § 553 (1988), or other procedural requirements imposed with Congress.

Robert S. Glenn, DeLoyd Cazier, 124 IBLA 104 (Sept. 17, 1992)

INTERPRETATION

Where subsequent legislation renders questionable the continued validity of a BIA regulation, the Board of

REGULATIONS--Continued

INTERPRETATION--Continued

Indian Appeals will not apply the regulation to the detriment of a party dealing with the Bureau.

The Guardian Life Insurance Co. of America & Public Leasing Corp. v. Acting Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 104 (June 11, 1992)

PUBLICATION

All persons dealing with the Federal Government are presumed to have knowledge of duly promulgated regulations.

All Materials of Montana, Inc. v. Billings Area Director, Bureau of Indian Affairs, 21 IBIA 202 (Feb. 27, 1992)

A lessee of Indian trust or restricted property has a duty and responsibility to familiarize itself with the regulations governing its lease.

Craig McGriff Exploration, Inc. v. Acting Anadarko Area Director, Bureau of Indian Affairs, 22 IBIA 265 (Sept. 8, 1992)

RENT

An appraisal of the fair market rental value of a reservoir right-of-way will be upheld on appeal where no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

A decision initially advising the holder of a right-of-way of the fair market rental value of the

RENT--Continued

grant and billing that amount more than 6 years after issuance of the right-of-way may be set aside and remanded for consideration of whether in the public interest the rental charge should be reduced on the basis of undue hardship to the holder under the regulation at 43 CFR 2803.1-2(b)(2)(iv) where the reservoir authorized by the right-of-way was never constructed.

V. Irene Wallace, 122 IBLA 349 (Mar. 12, 1992)

Rental rate adjustment determinations, modified below to change the effective date for implementation of the adjustments, will be affirmed on appeal where appellants fail to submit evidence which would warrant any further adjustment in the rental rates concerned.

Quarters Rental Rate Appeals of Messrs. Frank S. Alby & Hamilton Greely, 9 OHA 155 (Apr. 29, 1992)

BLM properly increased the rental for an existing FLPMA linear right-of-way using the regulatory rental fee schedule for linear rights-of-way, when the regulation calling for rental adjustment at least once every 5 years was expressly incorporated into appellant's right-of-way grant, and the regulatory fee schedule was applicable during the course of a periodic adjustment necessary to reflect the then current fair market rental value.

Jack C. Gutte, 123 IBLA 295 (June 23, 1992)

If the appraisal setting fair market rental value fails to consider the effect of restrictive clauses limiting the use and enjoyment of the leased land on the fair market rental value, the appraisal will be set

RENT--Continued

aside and the case file will be remanded to consider rental reductions reflecting those restrictions.

Mathilda B. Williams, Jack F. Brown, 124 IBLA 7
(Aug. 13, 1992)

RES JUDICATA

Reinstatement is properly denied for an allotment application terminated by operation of law pursuant to 43 CFR 2212.9-3(f) (1968) for failure to file proof of use and occupancy within 6 years after filing the application when the decedent's use and occupancy had begun less than 1 year before the application was filed.

Heirs of Edward Peter, 122 IBLA 109 (Jan. 14, 1992)

RIGHTS-OF-WAY

(See also Indians, Reclamation Lands)

GENERALLY

Absent a demonstration that BLM's method for appraising the value of the linear and site components of a right-of-way granted for a hydroelectric power facility is erroneous or the rental is clearly excessive, a BLM decision adjusting the rental is properly affirmed.

Bear Creek Hydro, 122 IBLA 200 (Feb. 10, 1992)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

An appraisal of a right-of-way will not be set aside unless BLM has erred in applying the proper criteria to calculate the fair market rental value or the appellant shows that the resulting charges are excessive. Absent error in the appraisal methods utilized, an appellant is normally required to submit another appraisal in order to present sufficiently convincing evidence that the rental charges are excessive.

KPVI Channel 6, 122 IBLA 263 (Mar. 3, 1992)

The question whether a public highway was established pursuant to R.S. 2477 is to be determined by reference to state law. BLM may decide whether an R.S. 2477 road exists if the efficient administration of the public lands requires such a decision to be made.

Construction of 1,000 feet of road across public land in Oct. 1990 was done in trespass because no prior application for a right-of-way at the construction site was made and the road builder failed to show that the 1,000-foot road was a public highway recognized pursuant to Montana law prior to the repeal of R.S. 2477 by FLPMA.

Courtney Ayers, 122 IBLA 275 (Mar. 5, 1992)

Any use or occupancy of the public lands such as for radio broadcasting which requires a right-of-way or temporary use permit, which use has not been authorized, is prohibited and shall constitute a trespass for which the trespasser is liable for administrative costs, damages, and penalties under the regulations at 43 CFR 2801.3.

An assessment of damages for a willful trespass is properly affirmed where appellant's conduct constituted a voluntary or conscious trespass in that the evidence

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

shows appellant knew of the lack of authority to use the public lands for communication site purposes.

High Desert Communications, Inc., 123 IBLA 20 (Apr. 24, 1992)

A rental rate adjustment for a right-of-way for a hydroelectric power plant under 43 CFR 2803.1-2 will be set aside and remanded so that the BLM Manual may apply policies and procedures that are being developed for determining rentals for such rights-of-way.

Bear Creek Hydro (On Reconsideration), 124 IBLA 225 (Oct. 27, 1992)

ACT OF MARCH 3, 1891

Where a right-of-way grant issued under the Act of Mar. 3, 1891, does not contain provisions expressly mandating the filing of proof of construction of required improvements, failure to file does not, by itself, justify cancellation of the right-of-way.

The holder of a right-of-way issued under the Act of Mar. 3, 1891, is entitled to a factfinding hearing prior to cancellation for failure to construct improvements within 5 years of issuance as required by sec. 20 of that Act, where the case record does not demonstrate that improvements were not timely constructed, and where the right-of-way holder has expressly asserted that construction has been completed. In such hearing, BLM, as the proponent of the invalidity of the right-of-way, has the burden of proving that authorized improvements were not timely constructed.

John C. Urquidi, 124 IBLA 353 (Dec. 4, 1992)

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 25, 1920

The MLA, as implemented by Departmental regulations, does not require rights-of-way for construction and operation of "production facilities." In the case of gas, under 43 CFR 2880.5(k), production facilities include a lessee's or lease operator's gathering lines which are located on lease upstream from the point of delivery to a transportation pipeline.

Where pipelines on a Federal oil and gas lease (described by the lessee as "lateral lines") move lease production to a central accumulation point on each lease; where each such line connects directly to a gas well and brings gas by separate individual lines to a central point where the gas is delivered into a single line; and where the primary function of the lines is gathering, they are properly considered "gathering lines" under 43 CFR 2880.0-5(k).

It is incumbent upon BLM to examine the facts and circumstances of individual cases to determine where the point of delivery from production facilities to the transportation pipeline actually is. A decision by BLM establishing the point of delivery as the "approved production accounting measurement point" at the wellhead will be set aside where the record does not establish that delivery took place at that point.

Enron Oil & Gas Co., 122 IBLA 224 (Feb. 26, 1992)
99 I.D. 20

APPRAISALS

Absent a demonstration that BLM's method for appraising the value of the linear and site components of a right-of-way granted for a hydroelectric power facility is erroneous or the rental is clearly excessive, a BLM decision adjusting the rental is properly affirmed.

Bear Creek Hydro, 122 IBLA 200 (Feb. 10, 1992)

RIGHTS-OF-WAY--Continued

APPRAISALS--Continued

An appraisal of the fair market rental value of a reservoir right-of-way will be upheld on appeal where no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

A decision initially advising the holder of a right-of-way of the fair market rental value of the grant and billing that amount more than 6 years after issuance of the right-of-way may be set aside and remanded for consideration of whether in the public interest the rental charge should be reduced on the basis of undue hardship to the holder under the regulation at 43 CFR 2803.1-2(b)(2)(iv) where the reservoir authorized by the right-of-way was never constructed.

V. Irene Wallace, 122 IBLA 349 (Mar. 12, 1992)

BLM properly increased the rental for an existing FLPMA linear right-of-way using the regulatory rental fee schedule for linear rights-of-way, when the regulation calling for rental adjustment at least once every 5 years was expressly incorporated into appellant's right-of-way grant, and the regulatory fee schedule was applicable during the course of a periodic adjustment necessary to reflect the then current fair market rental value.

Jack C. Gutte, 123 IBLA 295 (June 23, 1992)

A rental rate adjustment for a right-of-way for a hydroelectric power plant under 43 CFR 2803.1-2 will be set aside and remanded so that the BLM Manual may apply policies and procedures that are being developed for determining rentals for such rights-of-way.

Bear Creek Hydro (On Reconsideration), 124 IBLA 225 (Oct. 27, 1992)

RIGHTS-OF-WAY--Continued

APPRAISALS--Continued

BLM properly requires the holder of a communications site right-of-way to pay rental charges, in addition to those originally estimated at the time of issuance of the right-of-way grant, based upon an appraisal of the fair market rental value of the right-of-way.

Voice Ministries of Farmington, Inc., 124 IBLA 358
(Dec. 4, 1992)

CANCELLATION

Where a right-of-way grant issued under the Act of Mar. 3, 1891, does not contain provisions expressly mandating the filing of proof of construction of required improvements, failure to file does not, by itself, justify cancellation of the right-of-way.

The holder of a right-of-way issued under the Act of Mar. 3, 1891, is entitled to a factfinding hearing prior to cancellation for failure to construct improvements within 5 years of issuance as required by sec. 20 of that Act, where the case record does not demonstrate that improvements were not timely constructed, and where the right-of-way holder has expressly asserted that construction has been completed. In such hearing, BLM, as the proponent of the invalidity of the right-of-way, has the burden of proving that authorized improvements were not timely constructed.

John C. Urquidi, 124 IBLA 353 (Dec. 4, 1992)

RIGHTS-OF-WAY--Continued

CONDITIONS AND LIMITATIONS

Absent a demonstration that BLM's method for appraising the value of the linear and site components of a right-of-way granted for a hydroelectric power facility is erroneous or the rental is clearly excessive, a BLM decision adjusting the rental is properly affirmed.

Bear Creek Hydro, 122 IBLA 200 (Feb. 10, 1992)

A rental rate adjustment for a right-of-way for a hydroelectric power plant under 43 CFR 2803.1-2 will be set aside and remanded so that the BLM Manual may apply policies and procedures that are being developed for determining rentals for such rights-of-way.

Bear Creek Hydro (On Reconsideration), 124 IBLA 225 (Oct. 27, 1992)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Absent a demonstration that BLM's method for appraising the value of the linear and site components of a right-of-way granted for a hydroelectric power facility is erroneous or the rental is clearly excessive, a BLM decision adjusting the rental is properly affirmed.

Bear Creek Hydro, 122 IBLA 200 (Feb. 10, 1992)

The question whether a public highway was established pursuant to R.S. 2477 is to be determined by reference to state law. BLM may decide whether an R.S. 2477 road exists if the efficient administration of the public lands requires such a decision to be made.

Construction of 1,000 feet of road across public land in Oct. 1990 was done in trespass because no prior

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

application for a right-of-way at the construction site was made and the road builder failed to show that the 1,000-foot road was a public highway recognized pursuant to Montana law prior to the repeal of R.S. 2477 by FLPMA.

Courtney Ayers, 122 IBLA 275 (Mar. 5, 1992)

Where BLM issues a decision denying the assignment of a salt water disposal right-of-way and such decision is merely conclusory in nature, the record is barren of any supporting rationale, and other unaddressed issues are presented, the decision will be set aside and the case remanded for BLM to reassess assignment of the right-of-way and determine what steps are necessary for the protection of the Federal mineral interest in the land in question.

Burnett Oil Co., Inc., 122 IBLA 330 (Mar. 11, 1992)

BLM properly increased the rental for an existing FLPMA linear right-of-way using the regulatory rental fee schedule for linear rights-of-way, when the regulation calling for rental adjustment at least once every 5 years was expressly incorporated into appellant's right-of-way grant, and the regulatory fee schedule was applicable during the course of a periodic adjustment necessary to reflect the then current fair market rental value.

Jack C. Gutte, 123 IBLA 295 (June 23, 1992)

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

A rental rate adjustment for a right-of-way for a hydroelectric power plant under 43 CFR 2803.1-2 will be set aside and remanded so that the BLM Manual may apply policies and procedures that are being developed for determining rentals for such rights-of-way.

Bear Creek Hydro (On Reconsideration), 124 IBLA 225
(Oct. 27, 1992)

NATURE OF INTEREST GRANTED

Where, after a Native initiates use and occupancy of certain lands and files an allotment application but prior to the completion of 5 years' use and occupancy, rights-of-way are sought and granted by BLM across such lands, subject to valid existing rights, the completion of the requisite 5 years vests the inchoate preference right arising from use and occupancy. That right relates back to the initiation of use and occupancy, thereby taking precedence over the intervening rights-of-way, which are properly declared null and void.

State of Alaska, Dept. of Transportation & Public Facilities, 124 IBLA 386 (Dec. 10, 1992)

Where, after a Native initiates use and occupancy of certain lands, a right-of-way is sought and granted by BLM across such lands, subject to valid existing rights, the later filing of the allotment application vests the inchoate preference right arising from use and occupancy, and that right relates back to the initiation of use and occupancy, thereby taking precedence over the intervening right-of-way, which is properly declared null and void.

State of Alaska, 125 IBLA 21 (Dec. 21, 1992)

RIGHTS-OF-WAY--Continued

OIL AND GAS PIPELINES

The MLA, as implemented by Departmental regulations, does not require rights-of-way for construction and operation of "production facilities." In the case of gas, under 43 CFR 2880.5(k), production facilities include a lessee's or lease operator's gathering lines which are located on lease upstream from the point of delivery to a transportation pipeline.

Where pipelines on a Federal oil and gas lease (described by the lessee as "lateral lines") move lease production to a central accumulation point on each lease; where each such line connects directly to a gas well and brings gas by separate individual lines to a central point where the gas is delivered into a single line; and where the primary function of the lines is gathering, they are properly considered "gathering lines" under 43 CFR 2880.0-5(k).

It is incumbent upon BLM to examine the facts and circumstances of individual cases to determine where the point of delivery from production facilities to the transportation pipeline actually is. A decision by BLM establishing the point of delivery as the "approved production accounting measurement point" at the wellhead will be set aside where the record does not establish that delivery took place at that point.

Enron Oil & Gas Co., 122 IBLA 224 (Feb. 26, 1992)
99 I.D. 20

Analysis under NEPA of the impacts to the human environment of an oil and gas pipeline designed to serve certain existing and proposed oil and gas wells properly considers the foreseeable cumulative impacts of the pipeline and the wells it is designed to serve.

Southern Utah Wilderness Alliance et al., 124 IBLA 162 (Oct. 1, 1992)

RIGHTS-OF-WAY--Continued

REVISED STATUTES SEC. 2477

The question whether a public highway was established pursuant to R.S. 2477 is to be determined by reference to state law. BLM may decide whether an R.S. 2477 road exists if the efficient administration of the public lands requires such a decision to be made.

Construction of 1,000 feet of road across public land in Oct. 1990 was done in trespass because no prior application for a right-of-way at the construction site was made and the road builder failed to show that the 1,000-foot road was a public highway recognized pursuant to Montana law prior to the repeal of R.S. 2477 by FLPMA.

Courtney Ayers, 122 IBLA 275 (Mar. 5, 1992)

RULES OF PRACTICE

(See also Administrative Procedure, Appeals, Contests & Protests, Contracts, Hearings, Indian Probate, Practice Before the Department)

APPEALS

Generally

Departmental regulation 43 CFR 3120.1-3 provides that no action taken pursuant to regulations governing competitive oil and gas leasing in Subpart 3120 shall be suspended under 43 CFR 4.21(a), which would otherwise suspend the effect of decisions after appeal or while an appeal could be filed. Although BLM's authorized officer may suspend offering a particular lease parcel while a protest or appeal is considered, BLM properly refused to suspend sale of 37 lease parcels where objection was made on the day of sale but no reason was stated for the protest.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Sec. 905(a)(1) of ANILCA, 43 U.S.C. § 1634(a) (1988), provides that all Native allotment applications which were pending before the Department on or before Dec. 18, 1971, are approved on the 180th day following the effective date of the Act, unless otherwise provided by other paragraphs or subsections of that section. An application is pending on or before Dec. 18, 1971, where the application is filed in 1960 and closed in 1966 for failure to provide any proof of use and occupancy, but the applicant is not notified by decision of the closure and the BLM field report discloses an issue of fact as to applicant's exclusive use or occupancy. Under such circumstances, BLM erred in rejecting an applicant's request that his Native allotment application be reinstated and either approved or adjudicated pursuant to sec. 905(a) of ANILCA.

Andrew Balluta, 122 IBLA 30 (Jan. 3, 1992)

Where, in the course of analysis and adjudication, a proposal is changed so much that those potentially adversely affected do not have fair notice of its contents, the decision of the ALJ on the proposal will be set aside and the matter remanded so that BLM may issue a new proposed decision based on analysis of the redefined proposal.

Glenn Grenke v. Bureau of Land Management, 122 IBLA 123 (Jan. 24, 1992)

Where the Colorado State Director, BLM, issued a decision approving a record of decision for an EIS regarding a vegetative treatment program for 13 western states, insofar as it related to public lands administered by BLM in Colorado, and the Ass't Secretary, Land and Minerals Management, subsequently concurred in

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

selection of the vegetative treatment program, that concurrence amounted to Secretarial approval of the vegetative treatment program for BLM lands in 13 western states, including Colorado. Accordingly, the Board of Land Appeals lacks jurisdiction to consider an appeal of the Colorado State Director's decision file subsequent to the Ass't Secretary's action.

The Wilderness Society, 122 IBLA 162 (Feb. 6, 1992)

The Board does not make initial adjudication of the existence of valid existing rights to mine that has not first been submitted to and decided by OSM, the agency with jurisdiction of the subject matter involved, nor does the Board render advisory opinions.

Gabriel Energy Corp. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 316 (Mar. 11, 1992)

Review of the merits of a trespass case may be expedited by the Board where the decision is made effective by regulation pending appeal and review of a motion for stay discloses a conflict between the threat of injury to the appellant and the threat of adverse effect to the public interest.

High Desert Communications, Inc., 123 IBLA 20 (Apr. 24, 1992)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Under the Board's Rule 4.114(a), it may call upon the parties for evidence deemed by it to be relevant and material. When the contractor, pursuant to the Board's remand decision, offered quantum evidence from the Government's files obtained during discovery; the Government apparently conceded the document at issue was prepared by BOR and, at a minimum, offered no specific challenge to its authenticity, although it had ample time to do so; and the document was consistent with evidence already in the record, relevant, and material, the Board admitted it in supplementation of the record.

Appeal of White & McNeil Excavating, Inc., IBCA-2448
(July 24, 1992) 99 I.D. 121

Facsimile transmission of a document does not comply with the service requirements of 43 CFR 4.401(c).

Animal Protection Institute of America, 124 IBLA 231
(Oct. 28, 1992)

Burden of Proof

When the Government has presented evidence that a quartz mill or reduction works is not present on a millsite, and the claimant fails to refute that evidence, the millsite does not qualify as an independent millsite pursuant to 30 U.S.C. § 42 (1988).

When the Government has presented evidence that a millsite is not being used or occupied for mining and milling purposes, and the claimant fails to refute that

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden_of Proof--Continued

evidence, the millsite does not qualify as a dependent millsite pursuant to 30 U.S.C. § 42 (1988).

United States v. Loyall Fraker, 122 IBLA 24 (Jan. 3, 1992)

An appellant who does not with some particularity show adequate reason for appeal, and, as appropriate, support the allegation with argument or evidence showing error, cannot be afforded favorable consideration. Conclusory allegations of error, standing alone, do not suffice.

Glanville Farms, Inc. v. Bureau of Land Management, 122 IBLA 77 (Jan. 14, 1992)

Dismissal

In deciding a motion to dismiss, the Board will consider the uncontroverted facts alleged by the appellant to be correct and will construe its allegations favorably to it, but the appellant is required to establish jurisdiction. If the appellant has made a prima facie showing that jurisdiction exists, however, the Government must present some evidence to refute that showing. An unsubstantiated allegation will not suffice.

When the certification requirements of the Contract Disputes Act are met, the Board has jurisdiction to entertain an appeal from a contracting officer's decision denying a claim brought and certified on behalf of a dissolved joint venture, and the appeal may be pursued in the name of the joint venture.

The Board found that a corporation properly could be substituted as the appellant because it was the real

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

party in interest in the appeal. The substitution did not violate the anti-assignment statutes, because they did not apply. The Board based its conclusion upon the facts that the appeal originally was filed correctly on behalf of the joint venture contracting entity; 3 months before the completion of the 2-1/2-year contract term the venture dissolved, but the corporate member of the venture, which was a contract signatory and the venture's managing party for the contract, remained intact, continued to perform, and attended to the completion of the contract work; before the appeal was filed, all of the venture's interests and obligations were merged into the corporation; and there was no prejudice to the Government.

The Board found that the corporate member of a joint venture contracting entity had the authority to certify a claim on behalf of the joint venture and, in any event, was the equivalent of the "general partner" of the venture with overall responsibility for the conduct of its affairs. The latter factor alone qualified the corporation under the contract's Disputes clause to certify the claim. The corporate president, in turn, clearly was authorized to sign for the corporation. Accordingly, his signature bound the joint venture. He also had implied authority to bind the joint venture because he signed the contract on behalf of both of its members. The certification otherwise met all of the requirements of the Disputes clause and the Board had jurisdiction to entertain the appeal.

Appeal of Ball, Ball, & Brosamer, Inc., IBCA-2103-N
(Feb. 5, 1992) 99 I.D. 1

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

A statement of reasons filed in support of an appeal that does not affirmatively point out how the decision appealed from is in error does not meet the requirements of the Department's rules of practice and the appeal is subject to dismissal.

W. J. & Betty Lo Wells, 122 IBLA 250 (Feb. 28, 1992)

An appeal from an order establishing a reclamation bond for a mining operation becomes moot if, during appeal, the plan expires or is modified.

Jim D. Wills, Reggie N. Wills, 123 IBLA 74 (May 11, 1992)

To constitute an adequate SOR, an appellant's document must affirmatively point out error in the appealed decision. If the SOR is deemed inadequate, the appeal will be subject to summary dismissal.

J. W. Weaver, 124 IBLA 29 (Aug. 21, 1992)

An appeal will not be dismissed as untimely if the record transmitted with the appeal fails to establish that the decision from which the appeal is taken was served upon appellant in accordance with 43 CFR 4.401(c) more than 30 days prior to the filing of the notice of appeal or that appellant had actual notice of the decision for more than 30 days before notice of appeal was filed.

Animal Protection Institute of America, 124 IBLA 231 (Oct. 28, 1992)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

As used in 43 CFR 4.401(a), which provides a grace period for documents untimely filed, a document is "transmitted or probably transmitted" when custody and control of the document is surrendered to an agency charged with delivering the document to the proper office.

United States Forest Service, Alaska Region, 124 IBLA 336 (Nov. 18, 1992)

An appeal filed by means of a FAX machine is properly considered to have been transmitted on the day of filing in the absence of any evidence the notice of appeal was transmitted earlier. Hence, a notice of appeal received by FAX machine 1 day beyond the appeal period set forth in 43 CFR 4.411 will be dismissed as untimely where there is no indication that the notice of appeal was transmitted or probably transmitted before the end of the period in which it was required to be filed.

Ron Williams Construction Co., 124 IBLA 340 (Nov. 25, 1992)

Practice before the Interior Board of Land Appeals is controlled by 43 CFR 1.3. To the extent it is brought by a person who does not fall within any of the categories of persons authorized to practice by 43 CFR 1.3, an appeal is subject to dismissal.

High Plains Petroleum Corp., 125 IBLA 24 (Dec. 29, 1992)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

In deciding motions to dismiss for lack of jurisdiction, in connection with appellant's claims under its contract with the BOR for canal construction, the Board construed the complaint's allegations favorably to appellant; accepted unchallenged allegations as true; and considered relevant evidence of record.

The Board found that a subcontractor had not withdrawn its claims against appellant arising out of the BOR contract, and the fact that appellant was required to pay the subcontractor in accordance with the subcontract, if the Bureau paid appellant was sufficient to bar the application of the "Severin doctrine," which provides that a prime contractor cannot recover sums from the Government if they pertain only to a subcontractor's claim which the prime is not liable to pay. The Board also found that appellant properly was pursuing claims in its own right, as the entity in privity of contract with the Government.

In finding that appellant's administrative delay claim in connection with the resolution of a design defect involving five concrete structures was based upon the same operative facts included in its original certified claim to the contracting officer under the CDA, and did not constitute a new claim, the Board considered the totality of the relevant correspondence and communications. It also found that the claim satisfied the dispute and "sum certain" requirements of FAR 33.201.

The Board concluded that appellant's increase in its amended complaint of the number of delay days sought, its presentation of its quantum proof on a modified total cost basis, and its inclusion of costs associated with the effect of erroneous contract earthwork elevations upon pipe trenching, previously presented as a separate claim, then withdrawn, did not constitute new claims that had not been submitted to the contracting officer.

While finding that the Government had ample opportunity to audit and review appellant's claims, the Board

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

stressed that an audit was not a jurisdictional prerequisite under the CDA to the Board's consideration of a properly submitted claim.

Appeals of Hardrives, Inc., IBCA-2319 et al. (Dec. 30, 1992) 99 I.D. 249

Effect of

Departmental regulation 43 CFR 3120.1-3 provides that no action taken pursuant to regulations governing competitive oil and gas leasing in Subpart 3120 shall be suspended under 43 CFR 4.21(a), which would otherwise suspend the effect of decisions after appeal or while an appeal could be filed. Although BLM's authorized officer may suspend offering a particular lease parcel while a protest or appeal is considered, BLM properly refused to suspend sale of 37 lease parcels where objection was made on the day of sale but no reason was stated for the protest.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

The general regulations governing proceedings before OHA contain a rule, 43 CFR 4.21(a), providing that a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and that the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. The rule specifically provides, however, that it is effective "[e]xcept as otherwise provided by law or other pertinent regulation." An interim final rule, published in the Federal Register on Mar. 13, 1992 (57 FR 9010), 43 CFR 3150.2, provides otherwise by making decisions approving notices

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect_of--Continued

of intent to conduct geophysical exploration effective pending appeal.

The interim final rule amending 43 CFR Subpart 3150 to make decisions and approvals of the authorized officer in onshore oil and gas geophysical exploration matters effective pending appeal has the effect of making such BLM determinations final agency action immediately subject to judicial review under the provisions of 5 U.S.C. § 704 (1988). While the interim final rule provides that a petition for stay may be filed with the Board of Land Appeals, a person would not be required to exhaust that procedure before proceeding to District Court.

Southern Utah Wilderness Alliance, 123 IBLA 13 (Apr. 22, 1992)

Failure to Appeal

Failure to appeal a decision designating an area as a WSA renders it final and precludes a party from later challenging it on appeal of a subsequent BLM decision approving a road restoration project within the WSA.

San Juan County Commission, 123 IBLA 68 (May 11, 1992)

Hearings

The holder of a right-of-way issued under the Act of Mar. 3, 1891, is entitled to a factfinding hearing prior to cancellation for failure to construct improvements within 5 years of issuance as required by sec. 20 of that Act, where the case record does not demonstrate that improvements were not timely constructed, and where

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

the right-of-way holder has expressly asserted that construction has been completed. In such hearing, BLM, as the proponent of the invalidity of the right-of-way, has the burden of proving that authorized improvements were not timely constructed.

John C. Urquidi, 124 IBLA 353 (Dec. 4, 1992)

Jurisdiction

Standing to appeal a decision of BLM requires that an appellant establish that it is a party to the case adversely affected by the decision.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

In deciding a motion to dismiss, the Board will consider the uncontroverted facts alleged by the appellant to be correct and will construe its allegations favorably to it, but the appellant is required to establish jurisdiction. If the appellant has made a prima facie showing that jurisdiction exists, however, the Government must present some evidence to refute that showing. An unsubstantiated allegation will not suffice.

When the certification requirements of the Contract Disputes Act are met, the Board has jurisdiction to entertain an appeal from a contracting officer's decision denying a claim brought and certified on behalf of a dissolved joint venture, and the appeal may be pursued in the name of the joint venture.

The Board found that a corporation properly could be substituted as the appellant because it was the real party in interest in the appeal. The substitution did

RULES OF PRACTICE--Continued

APPEALS--Continued

Jurisdiction--Continued

not violate the anti-assignment statutes, because they did not apply. The Board based its conclusion upon the facts that the appeal originally was filed correctly on behalf of the joint venture contracting entity; 3 months before the completion of the 2-1/2-year contract term the venture dissolved, but the corporate member of the venture, which was a contract signatory and the venture's managing party for the contract, remained intact, continued to perform, and attended to the completion of the contract work; before the appeal was filed, all of the venture's interests and obligations were merged into the corporation; and there was no prejudice to the Government.

The Board found that the corporate member of a joint venture contracting entity had the authority to certify a claim on behalf of the joint venture and, in any event, was the equivalent of the "general partner" of the venture with overall responsibility for the conduct of its affairs. The latter factor alone qualified the corporation under the contract's Disputes clause to certify the claim. The corporate president, in turn, clearly was authorized to sign for the corporation. Accordingly, his signature bound the joint venture. He also had implied authority to bind the joint venture because he signed the contract on behalf of both of its members. The certification otherwise met all of the requirements of the Disputes clause and the Board had jurisdiction to entertain the appeal.

Appeal of Ball, Ball, & Brosamer, Inc., IBCA-2103-N
(Feb. 5, 1992) 99 I.D. 1

RULES OF PRACTICE--Continued

APPEALS--Continued

Jurisdiction--Continued

A decision that is approved by the Secretary of the Interior is not subject to review by the Board of Land Appeals.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83 (Sept. 15, 1992)

An appeal filed by means of a FAX machine is properly considered to have been transmitted on the day of filing in the absence of any evidence the notice of appeal was transmitted earlier. Hence, a notice of appeal received by FAX machine 1 day beyond the appeal period set forth in 43 CFR 4.411 will be dismissed as untimely where there is no indication that the notice of appeal was transmitted or probably transmitted before the end of the period in which it was required to be filed.

Ron Williams Construction Co., 124 IBLA 340 (Nov. 25, 1992)

In deciding motions to dismiss for lack of jurisdiction, in connection with appellant's claims under its contract with the BOR for canal construction, the Board construed the complaint's allegations favorably to appellant; accepted unchallenged allegations as true; and considered relevant evidence of record.

The Board found that a subcontractor had not withdrawn its claims against appellant arising out of the BOR contract, and the fact that appellant was required to pay the subcontractor in accordance with the subcontract, if the Bureau paid appellant was sufficient to

RULES OF PRACTICE--Continued

APPEALS--Continued

Jurisdiction--Continued

bar the application of the "Severin doctrine," which provides that a prime contractor cannot recover sums from the Government if they pertain only to a subcontractor's claim which the prime is not liable to pay. The Board also found that appellant properly was pursuing claims in its own right, as the entity in privity of contract with the Government.

In finding that appellant's administrative delay claim in connection with the resolution of a design defect involving five concrete structures was based upon the same operative facts included in its original certified claim to the contracting officer under the CDA, and did not constitute a new claim, the Board considered the totality of the relevant correspondence and communications. It also found that the claim satisfied the dispute and "sum certain" requirements of FAR 33.201.

The Board concluded that appellant's increase in its amended complaint of the number of delay days sought, its presentation of its quantum proof on a modified total cost basis, and its inclusion of costs associated with the effect of erroneous contract earthwork elevations upon pipe trenching, previously presented as a separate claim, then withdrawn, did not constitute new claims that had not been submitted to the contracting officer.

While finding that the Government had ample opportunity to audit and review appellant's claims, the Board stressed that an audit was not a jurisdictional prerequisite under the CDA to the Board's consideration of a properly submitted claim.

Appeals of Hardrives, Inc., IBCA-2319 et al. (Dec. 30, 1992) 99 I.D. 249

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions

Review of the merits of a trespass case may be expedited by the Board where the decision is made effective by regulation pending appeal and review of a motion for stay discloses a conflict between the threat of injury to the appellant and the threat of adverse effect to the public interest.

High Desert Communications, Inc., 123 IBLA 20 (Apr. 24, 1992)

A motion by appellant to stay the effect of a decision pending review by the Board on appeal is generally decided on the basis of certain factors: the likelihood of success on the merits; the threat of irreparable injury to the moving party if the stay is denied; whether the threatened injury to the moving party outweighs the threatened injury to nonmoving parties; and whether the stay is contrary to the public interest. In order to support a preliminary stay the probability of success on the merits need not be free from doubt, but the motion must be supported by a showing of a reasonable basis for challenging the legal soundness of the decision below meriting careful review. In the absence of such a showing, the motion is properly denied.

Jan Wroncy, 124 IBLA 150 (Sept. 30, 1992)

In deciding motions to dismiss for lack of jurisdiction, in connection with appellant's claims under its contract with the BOR for canal construction, the Board construed the complaint's allegations favorably to appellant; accepted unchallenged allegations as true; and considered relevant evidence of record.

The Board found that a subcontractor had not withdrawn its claims against appellant arising out of the BOR contract, and the fact that appellant was required

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions--Continued

to pay the subcontractor in accordance with the subcontract, if the Bureau paid appellant was sufficient to bar the application of the "Severin doctrine," which provides that a prime contractor cannot recover sums from the Government if they pertain only to a subcontractor's claim which the prime is not liable to pay. The Board also found that appellant properly was pursuing claims in its own right, as the entity in privity of contract with the Government.

In finding that appellant's administrative delay claim in connection with the resolution of a design defect involving five concrete structures was based upon the same operative facts included in its original certified claim to the contracting officer under the CDA, and did not constitute a new claim, the Board considered the totality of the relevant correspondence and communications. It also found that the claim satisfied the dispute and "sum certain" requirements of FAR 33.201.

The Board concluded that appellant's increase in its amended complaint of the number of delay days sought, its presentation of its quantum proof on a modified total cost basis, and its inclusion of costs associated with the effect of erroneous contract earthwork elevations upon pipe trenching, previously presented as a separate claim, then withdrawn, did not constitute new claims that had not been submitted to the contracting officer.

While finding that the Government had ample opportunity to audit and review appellant's claims, the Board stressed that an audit was not a jurisdictional prerequisite under the CDA to the Board's consideration of a properly submitted claim.

Appeals of Hardrives, Inc., IBCA-2319 et al. (Dec. 30, 1992) 99 I.D. 249

RULES OF PRACTICE--Continued

APPEALS--Continued

Notice of Appeal

The general regulations governing proceedings before OHA contain a rule, 43 CFR 4.21(a), providing that a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and that the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. The rule specifically provides, however, that it is effective "[e]xcept as otherwise provided by law or other pertinent regulation." An interim final rule, published in the Federal Register on Mar. 13, 1992 (57 FR 9010), 43 CFR 3150.2, provides otherwise by making decisions approving notices of intent to conduct geophysical exploration effective pending appeal.

The interim final rule amending 43 CFR Subpart 3150 to make decisions and approvals of the authorized officer in onshore oil and gas geophysical exploration matters effective pending appeal has the effect of making such BLM determinations final agency action immediately subject to judicial review under the provisions of 5 U.S.C. § 704 (1988). While the interim final rule provides that a petition for stay may be filed with the Board of Land Appeals, a person would not be required to exhaust that procedure before proceeding to District Court.

Southern Utah Wilderness Alliance, 123 IBLA 13 (Apr. 22, 1992)

An appeal will not be dismissed as untimely if the record transmitted with the appeal fails to establish that the decision from which the appeal is taken was served upon appellant in accordance with 43 CFR 4.401(c) more than 30 days prior to the filing of the notice of

RULES OF PRACTICE--Continued

APPEALS--Continued

Notice_of Appeal--Continued

appeal or that appellant had actual notice of the decision for more than 30 days before notice of appeal was filed.

Animal Protection Institute of America, 124 IBLA 231
(Oct. 28, 1992)

Service on Adverse Party

Facsimile transmission of a document does not comply with the service requirements of 43 CFR 4.401(c).

Animal Protection Institute of America, 124 IBLA 231
(Oct. 28, 1992)

Standing to Appeal

Standing to appeal a decision of BLM requires that an appellant establish that it is a party to the case adversely affected by the decision.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

A purported assignee of a competitive oil and gas lease lacks standing to appeal from a BLM decision amending the lease to correct an erroneous acreage figure and requiring the lessee to pay additional first year's rental and minimum bonus bid depending on the revised figure, when the purported assignee has failed to sign the assignment document.

Stanley Energy, Inc., 122 IBLA 118 (Jan. 16, 1992)

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal--Continued

In order to establish standing to appeal under 43 CFR 4.410, an individual or organization must show that he or she is a party to a case and that a legally cognizable interest has been adversely affected by the appealed decision.

Glenn Grenke v. Bureau of Land Management, 122 IBLA 123 (Jan. 24, 1992)

Statement of Reasons

A protest is subject to dismissal if it is founded on conclusory allegations and no reason is given for halting the proposed action. A protestant cannot later cure the defect by stating reasons for protest for the first time on appeal to this Board.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

A decision by BLM may be affirmed where the SOR filed in support of appeal fails to point out error in the decision under review but instead merely reiterates arguments addressed to BLM in a protest and where our review finds the BLM decision on the protest is comprehensive and correctly addresses each of the arguments contained in the protest.

Oregon Natural Resources Council, 122 IBLA 65 (Jan. 9, 1992)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appellant who does not with some particularity show adequate reason for appeal, and, as appropriate, support the allegation with argument or evidence showing error, cannot be afforded favorable consideration. Conclusory allegations of error, standing alone, do not suffice.

Glanville Farms, Inc. v. Bureau of Land Management,
122 IBLA 77 (Jan. 14, 1992)

A statement of reasons filed in support of an appeal that does not affirmatively point out how the decision appealed from is in error does not meet the requirements of the Department's rules of practice and the appeal is subject to dismissal.

W. J. & Betty Lo Wells, 122 IBLA 250 (Feb. 28, 1992)

To constitute an adequate SOR, an appellant's document must affirmatively point out error in the appealed decision. If the SOR is deemed inadequate, the appeal will be subject to summary dismissal.

J. W. Weaver, 124 IBLA 29 (Aug. 21, 1992)

Stay

The general regulations governing proceedings before OHA contain a rule, 43 CFR 4.21(a), providing that a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and that the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. The rule specifically provides, however, that it is effective "[e]xcept as

RULES OF PRACTICE--Continued

APPEALS--Continued

Stay--Continued

otherwise provided by law or other pertinent regulation." An interim final rule, published in the Federal Register on Mar. 13, 1992 (57 FR 9010), 43 CFR 3150.2, provides otherwise by making decisions approving notices of intent to conduct geophysical exploration effective pending appeal.

The interim final rule amending 43 CFR Subpart 3150 to make decisions and approvals of the authorized officer in onshore oil and gas geophysical exploration matters effective pending appeal has the effect of making such BLM determinations final agency action immediately subject to judicial review under the provisions of 5 U.S.C. § 704 (1988). While the interim final rule provides that a petition for stay may be filed with the Board of Land Appeals, a person would not be required to exhaust that procedure before proceeding to District Court.

Southern Utah Wilderness Alliance, 123 IBLA 13 (Apr. 22, 1992)

Review of the merits of a trespass case may be expedited by the Board where the decision is made effective by regulation pending appeal and review of a motion for stay discloses a conflict between the threat of injury to the appellant and the threat of adverse effect to the public interest.

High Desert Communications, Inc., 123 IBLA 20 (Apr. 24, 1992)

RULES OF PRACTICE--Continued

APPEALS--Continued

Stay--Continued

Under BLM's interim final rule, 43 CFR 3165.4(c), promulgated by the Department on Mar. 13, 1992 (57 FR 9010), a petition for a stay of a decision or approval of the authorized officer is required to be filed with the Board of Land Appeals.

Wyoming Wildlife Federation, 123 IBLA 392 (Aug. 7, 1992)

A motion by appellant to stay the effect of a decision pending review by the Board on appeal is generally decided on the basis of certain factors: the likelihood of success on the merits; the threat of irreparable injury to the moving party if the stay is denied; whether the threatened injury to the moving party outweighs the threatened injury to nonmoving parties; and whether the stay is contrary to the public interest. In order to support a preliminary stay the probability of success on the merits need not be free from doubt, but the motion must be supported by a showing of a reasonable basis for challenging the legal soundness of the decision below meriting careful review. In the absence of such a showing, the motion is properly denied.

Jan Wroncy, 124 IBLA 150 (Sept. 30, 1992)

Timely Filing

A notice of appeal will not be considered untimely filed under 43 CFR 4.411(a) where there is proof that it was mailed in sufficient time to have been received by BLM within the required 30-day period and in fact it was received within that period by the named adverse party, and the only evidence of receipt by BLM is a handwritten

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

notation by an unidentified individual on the appeal notice.

Missouri Coalition for the Environment et al., 124 IBLA 211 (Oct. 23, 1992)

An appeal will not be dismissed as untimely if the record transmitted with the appeal fails to establish that the decision from which the appeal is taken was served upon appellant in accordance with 43 CFR 4.401(c) more than 30 days prior to the filing of the notice of appeal or that appellant had actual notice of the decision for more than 30 days before notice of appeal was filed.

Animal Protection Institute of America, 124 IBLA 231 (Oct. 28, 1992)

As used in 43 CFR 4.401(a), which provides a grace period for documents untimely filed, a document is "transmitted or probably transmitted" when custody and control of the document is surrendered to an agency charged with delivering the document to the proper office.

United States Forest Service, Alaska Region, 124 IBLA 336 (Nov. 18, 1992)

An appeal filed by means of a FAX machine is properly considered to have been transmitted on the day of filing in the absence of any evidence the notice of appeal was transmitted earlier. Hence, a notice of appeal received by FAX machine 1 day beyond the appeal period set forth in 43 CFR 4.411 will be dismissed as untimely where there is no indication that the notice of appeal was transmitted or probably transmitted before

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

the end of the period in which it was required to be filed.

Ron Williams Construction Co., 124 IBLA 340 (Nov. 25, 1992)

EVIDENCE

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them is rebuttable by probative evidence to the contrary. The presumption is rebutted where the mining claimant provides copies of affidavits of assessment work timely filed with BLM for 45 claims, a copy of a document filed with BLM stating that evidence of assessment work for 52 claims was being filed along with \$260, and a "Receipt and Accounting Advice" acknowledging receipt of that amount of money, and BLM has not refunded any of that money. Such evidence of assessment work was filed for all 52 claims.

Silver King Mining Co., 122 IBLA 357 (Mar. 19, 1992)

Sec. 102(a) of FOGDMA, 30 U.S.C. § 1712(a) (1988), requires a lessee to notify the Secretary of the assignment of the obligation to pay royalty. Sec. 3(7) of FOGDMA, 30 U.S.C. § 1702(7) (1988), defines lessee as including any person who has been assigned an obligation to make a royalty or other payment required by a lease. Under secs. 102(a) and 3(7) of FOGDMA, for a person who holds no interest in a lease to be liable for the lessee's royalty payments, the lessee and the person must have agreed to an assignment of the obligation to pay royalty, and notice of that assignment or either

RULES OF PRACTICE--Continued

EVIDENCE--Continued

evidence of or notice of an assignment, and filing a PIF, without more, does not render the person filing it a lessee under sec.3(7) of FOGRMA, 30 U.S.C. § 1702(7) (1988). There must be a document assigning the obligation to make royalty payments or a contract or agreement stating this obligation.

The assignment of the obligation to make royalty payments is not related to an assignment of a lease or an interest in a lease that must be approved by BIA under 25 CFR 212.22.

The making of royalty payments and the filing of PIFs are not sufficient evidence to indicate an intent to be bound as an agent by lessees' obligation to pay royalty.

Mesa Operating Ltd Partnership, 125 IBLA 28 (Dec. 31, 1992) 99 I.D. 272

HEARINGS

Where, after final proof of use and occupancy has been filed and equitable title has passed to the applicant, BLM determines that the land in the application is not subject to conveyance because it is mineral in character, e.g., valuable for placer gold, it may not reject the application without affording the applicant notice and an opportunity to contest the mineral-in-character classification, as required by Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

Mary Johansen, 122 IBLA 344 (Mar. 11, 1992)

RULES OF PRACTICE--Continued

HEARINGS--Continued

The holder of a right-of-way issued under the Act of Mar. 3, 1891, is entitled to a factfinding hearing prior to cancellation for failure to construct improvements within 5 years of issuance as required by sec. 20 of that Act, where the case record does not demonstrate that improvements were not timely constructed, and where the right-of-way holder has expressly asserted that construction has been completed. In such hearing, BLM, as the proponent of the invalidity of the right-of-way, has the burden of proving that authorized improvements were not timely constructed.

John C. Urquidi, 124 IBLA 353 (Dec. 4, 1992)

PROTESTS

Departmental regulation 43 CFR 3120.1-3 provides that no action taken pursuant to regulations governing competitive oil and gas leasing in Subpart 3120 shall be suspended under 43 CFR 4.21(a), which would otherwise suspend the effect of decisions after appeal or while an appeal could be filed. Although BLM's authorized officer may suspend offering a particular lease parcel while a protest or appeal is considered, BLM properly refused to suspend sale of 37 lease parcels where objection was made on the day of sale but no reason was stated for the protest.

A protest is subject to dismissal if it is founded on conclusory allegations and no reason is given for halting the proposed action. A protestant cannot later cure the defect by stating reasons for protest for the first time on appeal to this Board.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

SECRETARY OF THE INTERIOR

(See also Administrative Authority)

Where the Colorado State Director, BLM, issued a decision approving a record of decision for an EIS regarding a vegetative treatment program for 13 western states, insofar as it related to public lands administered by BLM in Colorado, and the Ass't Secretary, Land and Minerals Management, subsequently concurred in selection of the vegetative treatment program, that concurrence amounted to Secretarial approval of the vegetative treatment program for BLM lands in 13 western states, including Colorado. Accordingly, the Board of Land Appeals lacks jurisdiction to consider an appeal of the Colorado State Director's decision file subsequent to the Ass't Secretary's action.

The Wilderness Society, 122 IBLA 162 (Feb. 6, 1992)

The Board of Indian Appeals has no authority to review acts or decisions of the Secretary of the Interior, except as referred to the Board by the Secretary under 43 CFR 4.330(a)(2).

Perry Murdock v. Acting Phoenix Area Director, Bureau of Indian Affairs, 22 IBIA 130 (June 18, 1992)

A decision that is approved by the Secretary of the Interior is not subject to review by the Board of Land Appeals.

Power River Basin Resource Council, Wyoming Chapter of the Sierra Club, Wyoming Outdoor Council, 124 IBLA 83 (Sept. 15, 1992)

SPECIAL USE PERMITS

Where required rental is not paid under a special use permit which provides for cancellation of the permit when the rent due, or any part thereof, is in arrears and unpaid for 30 days, the permit is properly terminated.

In the matter of Florence Gorman, 9 OHA 137 (Mar. 19, 1992)

The Board will not substitute its judgment for that of the duly authorized BLM official exercising discretion to reject a special recreation permit application on the ground that it conflicts with BLM objectives, responsibilities, or program for management of the public lands involved where the facts of record support the decision. However, where two criminal convictions which were substantially relied upon as a basis for the BLM decision are reversed on appeal subsequent to the BLM decision, and the record contains little factual detail of the basis for rejection, the case is properly remanded.

Red Rock Hounds, Inc., 123 IBLA 314 (June 29, 1992)

Where BLM's decision not to transfer commercial use privileges to noncommercial use on the wild section of the Rogue River is supported by the record, sound management policies, and applicable precedent, it will not be disturbed on appeal.

Nat'l Organization for River Sports, 124 IBLA 38 (Aug. 26, 1992)

SPECIAL USE PERMITS--Continued

Under sec. 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1988), and the implementing regulations in 43 CFR Subpart 2920, BLM has discretion to reject a proposal for use of lands which conflicts with BLM policy for management of the public lands involved. BLM properly rejects a proposal for a permit authorizing the use of assault weapons on public lands where such rejection is based on the State Director's IM. No. CA-90-155 in which he establishes a policy of closing BLM lands in California to the possession of assault weapons as defined by State law.

Where, under the authority of the Secretary of the Interior to issue permits pursuant to sec. 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1988), and 43 CFR Subpart 2920, BLM rejects a proposal for a permit authorizing the use of assault weapons on public lands based on the State Director's IM No. CA-90-155 in which he establishes a policy of closing BLM land in California to the possession of assault weapons as defined by State law, on challenging that determination must provide compelling reasons for modification or reversal. Failure to do so will result in the determination being affirmed on appeal when it is supported by the record.

Organized Sportsmen of Lassen County, 124 IBLA 325 (Nov. 6, 1992)

STATE LAWS

The Board of Indian Appeals has no authority to declare a Federal statute violative of the United States Constitution or in conflict with a state constitution.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

STATE TAXES

The distinction between a real property tax and a special assessment is that a tax is levied against all similarly situated property for purposes which will benefit the public generally and a special assessment is levied only against the specific property which benefits from the improvement financed by the assessment.

Tohono O'Odham Nation v. Acting Phoenix Area Director, Bureau of Indian Affairs, 22 IBIA 220 (Aug. 14, 1992)

STATUTORY CONSTRUCTION

GENERALLY

The general requirement of 16 U.S.C. § 1274(b) (1988), that the boundaries of each component of the national wild and scenic rivers systems designated by 16 U.S.C. § 1274(a) (1988), shall include an average of not more than 320 acres per mile on both sides of the river does not apply to river areas that Congress has specifically defined by reference to a map.

Joe Trow, 123 IBLA 96 (May 12, 1992)

In a case where the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters, the intention of the drafters, rather than the strict language, controls.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

STATUTORY CONSTRUCTION--Continued

ADMINISTRATIVE CONSTRUCTION

In order to correct prior error, an official of the BIA may change an administrative interpretation of a statute as long as the reason for the change is clearly set forth to show that the departure from the prior administrative position is not arbitrary or capricious.

Hopi Indian Tribe v. Director, Office of Trust & Economic Development, Bureau of Indian Affairs,
22 IBIA 10 (Apr. 7, 1992)

Courts commonly give deference to the construction of a statute by the agency charged with its administration, particularly one which was contemporaneous with the statute and has been consistently followed by the agency.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)
99 I.D. 219

IMPLIED REPEALS

The Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), was not repealed by the Alaska Statehood Act, 72 Stat. 339.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)
99 I.D. 219

STATUTORY CONSTRUCTION--Continued

INDIANS

In a case where the interests of an Indian tribe are arguably in conflict with the interests of some members of the tribe, the Board of Indian Appeals declines to invoke the canon regarding construction of statutory ambiguities in favor of Indians.

Where a statute concerning Indians manifests two competing purposes, an expansive reading of the statute should be avoided if that reading would disserve one of the two purposes.

By analogy to the canon that a state may tax Indians only when congressional consent to such taxation is unmistakably clear, the Board of Indian Appeals finds that a state may share in the oil and gas royalties from tribal property only when Congress has given its unequivocal consent.

In determining whether an instrument is a tribal lease for purposes of a particular Federal statute, the critical inquiry is whether it has the characteristics Congress had in mind when employing the term "tribal lease" in the statute.

State of Utah, Board of Indian Affairs & Division of Indian Affairs v. Navajo Area Director, Bureau of Indian Affairs, 21 IBIA 282 (Mar. 31, 1992) 99 I.D. 39

In determining whether charges imposed by an irrigation district are real property taxes for purposes of a particular Federal statute, the critical inquiry is whether such charges have the characteristics Congress had in mind in employing the term "real property taxes" in the statute.

When Congress enacts legislation providing for the trust acquisition of land for an Indian tribe, it should be deemed to intend that the normal title standards for

STATUTORY CONSTRUCTION--Continued

INDIANS--Continued

trust acquisitions will apply unless it provides otherwise in the statute.

Tohono O'Odham Nation v. Acting Phoenix Area Director, Bureau of Indian Affairs, 22 IBIA 220 (Aug. 14, 1992)

The Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), was not repealed by the Alaska Statehood Act, 72 Stat. 339.

The legislative history of the Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), makes it clear that Congress intended to reserve the reindeer industry in Alaska for the exclusive benefit of Alaska Natives.

Ambiguities in the Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), must be construed in favor of the Alaska Natives who are the intended beneficiaries of the Act.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

LEGISLATIVE HISTORY

The legislative history of the Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500n (1988), makes it clear that Congress intended to reserve the reindeer industry in Alaska for the exclusive benefit of Alaska Natives.

Reindeer Herders Ass'n v. Juneau Area Director, Bureau of Indian Affairs, 23 IBIA 28 (Nov. 13, 1992)

99 I.D. 219

STATUTORY CONSTRUCTION--Continued

LEGISLATIVE HISTORY--Continued

In enacting sec. 102(a) of FOGDMA, 30 U.S.C. § 1712(a) (1988), Congress did not expand the Secretary's authority but allowed him to determine, under existing authority of law, which person is responsible for making royalty payments.

Mesa Operating Ltd Partnership, 125 IBLA 28 (Dec. 31, 1992) 99 I.D. 272

STOCK-RAISING HOMESTEADS

(See also Homesteads (Ordinary))

In determining the appropriate amount of a bond for the protection of the owner of the surface estate of land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. §§ 291-301 (1976), BLM properly considers possible damages from projected mining operations within the entirety of the mining claims sought to be re-entered and occupied, relying on the current value of tangible improvements and of the projected lost grazing use of that land from such operations and subsequent reclamation. However, where BLM improperly discounts the value of future lost grazing use, the Board will recompute that value and set the proper bond amount.

William C. Hayes et ux., 122 IBLA 68 (Jan. 10, 1991)

If lands possess "known mineral values," the mineral estate for such lands may nevertheless be conveyed to the record owner of the surface under sec.209(b) of FLPMA if the reservation of mineral rights in the United States would interfere with appropriate "nonmineral development" of the land, provided that the nonmineral development is a more beneficial use of the land than mineral development. However, use of the surface of lands patented under the Stock-Raising Homestead Act for

STOCK-RAISING HOMESTEADS--Continued

grazing is not "nonmineral development" under the meaning of the statute.

Wayne D. Klump et al., 123 IBLA 51 (May 11, 1992)
99 I.D. 64

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

GENERALLY

An operation is exempt from SMCRA if extraction of coal is incidental to extraction of other materials and constitutes less than 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use and sale. If an operation is not exempt, mining without a valid permit would constitute a violation.

Robert L. Clewell et al., 123 IBLA 253 (June 18, 1992)
99 I.D. 100

ABATEMENT

Remedial Actions

Regulation 30 CFR 817.121(c)(1), requiring an operator to correct any material damage resulting from subsidence caused to surface lands, and regulation 405 KAR 18:210 § 3(2)(a), modelled thereon, are supported by sec. 516(b)(1) of SMCRA, 30 U.S.C. § 1266(b)(1) (1988), which requires that each permit require the operator to adopt measures consistent with known technology in order to, inter alia, prevent subsidence causing material damage to the extent technologically and economically feasible and to maintain the value and reasonably foreseeable use of surface lands.

Harlan Cumberland Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 129 (May 21, 1992)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ADMINISTRATIVE PROCEDURE

Generally

A letter from counsel for OWM to an operator that (1) speaks only of "considering the possibility of settlement," (2) cautions that remedial action required by the NOV's must be completed and failure-to-abate CO's terminated before any settlement can be negotiated, and (3) invites the operator to contact him after completion of reclamation if it is still interested in settlement, creates no basis on which the operator may reasonably rely that OSM agreed that the civil penalties for the NOV's would be settled when reclamation was completed. Where an offer to settle is made by counsel for OSM following completion of reclamation, but is not accepted by the operator, there is no basis to consider estopping OSM from collecting civil penalties for the NOV's.

J&M Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 90 (Jan. 14, 1992)

Burden of Proof

An operator challenging OSM's jurisdiction on the grounds that its mining activities fall within the 2-acre exemption under SMCRA bears the burden of affirmatively demonstrating entitlement to the exemption. OSM's determination that more than 2 acres have been disturbed at related minesites will be affirmed on appeal where the operator fails to show the contrary.

J&M Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 90 (Jan. 14, 1992)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ADMINISTRATIVE PROCEDURE--Continued

Burden of Proof--Continued

Under 43 CFR 4.1366(a), when a permit applicant seeks review of a permit condition imposed by OSM, OSM has the burden of going forward to establish a prima facie case as to the failure of the permit applicant to comply with applicable requirements of the Act or regulations or the appropriateness of the permit condition, and the applicant shall have the ultimate burden of persuasion as to its entitlement to the permit or the inappropriateness of the permit condition. To establish a prima facie case, OSM must introduce evidence that will justify but not compel a finding that the condition is an appropriate response to a failure of the permit application to satisfy a specified statutory or regulatory standard or is otherwise appropriate.

Peabody Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 195 (June 5, 1992)

A person challenging OSM's jurisdiction to issue a CO on the grounds that its mining activities fell within the 2-acre exemption under SMCRA bears the burden of affirmatively demonstrating entitlement to the exemption.

Mary Herald v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 334 (July 14, 1992)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

APPEALS

Generally

Pursuant to 43 CFR 4.1282(a), notice of appeal is filed with the office of the OSM official whose decision is appealed and a copy is at the same time filed with the Board of Land Appeals. Nonetheless, 43 CFR 4.1107(c) requires that notice of appeal need only be filed with the Board. This apparent conflict between rules governing notices of appeal from OSM decisions is resolved in favor of the appellant who files only with the Board.

An appeal from an OSM decision mailed to this Board within 30 days after issuance of the decision at issue is timely filed pursuant to 43 CFR 4.1107(g).

Marion A. Taylor, 124 IBLA 80 (Sept. 14, 1992)

BONDS

Generally

Where reclamation costs exceed the amounts forfeited under a bond, the Board will not affirm an OSM decision that a state agency has taken appropriate action under 30 U.S.C. § 1271(a)(1) (1988), simply because a bond was ordered forfeited.

Robert L. Clewell et al., 123 IBLA 253 (June 18, 1992)
99 I.D. 100

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

BONDS--Continued

Generally--Continued

A performance bond, issued in 1981 during the interim program, when a bond was required by the State but was not required by SMCRA, and utilized again as the bond required by the State's surface mining act and by SMCRA for the grant of a permanent program permit, is a statutory bond pursuant to SMCRA. Such a bond remains enforceable by OSM despite repeal of the State's surface mining act.

Exchange Mutual Insurance Co. (On Reconsideration),
Exchange Mutual Insurance Co., 124 IBLA 72 (Sept. 2,
1992)

Departmental regulation 30 CFR 800.21 does not allow hypothecation of real property not owned by a permittee to insure mine reclamation.

Pacific Coast Coal Co., Inc., 124 IBLA 370 (Dec. 9,
1992)

CESSATION ORDERS

Generally

Sec. 528(2) of SMCRA, P.L. 95-87, 91 Stat. 445, 514 (1977), formerly provided that the Act would not apply to "the extraction of coal for commercial purposes when the surface mining operation affects two acres or less." Under 30 CFR 700.11(b), the exemption does not apply where the operation, together with any "related" operation, has or will have an affected area of 2 acres or more. Under 30 CFR 700.11(b)(2), operations are deemed "related" if (1) they occur within 12 months of each other; (2) they are "physically related"; and (3) they are under "common control."

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CESSATION ORDERS--Continued

Generally--Continued

The permittee of a surface mining operation is ordinarily responsible for violations of SMCRA and the regulations committed by the operator on the permitted site. The issuance of a CO to the holder of a 2-acre permit for failure to obtain a permit under the Act and reclaim the highwall as required under the Act which is predicated on the mining of physically related sites under common control totalling in excess of 2 acres within 12 months will be reversed where the record establishes that the permittee of the 2-acre site had no ownership or control of operations on the physically related sites.

Mary Herald v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 334 (July 14, 1992)

CITIZEN COMPLAINTS

Generally

Under 30 CFR 842.11(b)(2), OSM has reason to believe that a violation, condition, or practice exists if the facts alleged by an informant would, if true, constitute a condition, practice, or violation of SMCRA, Departmental regulations at 30 CFR ch. VII, the applicable state program, or any condition of a permit or exploration approval. Once a citizen's complaint gives OSM reason to believe that a violation of the Act has occurred, OSM is required by 30 U.S.C. § 1271(a)(1) (1988), to notify the state regulatory authority thereof.

Under 30 CFR 842.11(b)(1)(iii)(A), OSM is required to immediately notify the state regulatory authority in writing when in response to a 10-day notice the state regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. If the state regulatory authority

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CITIZEN COMPLAINTS--Continued

Generally--Continued

disagrees with the authorized representative's written determination, it may file a request in writing for informal review of that determination by the Deputy Director within 5 days from receipt of OSM's written determination. While a final determination as to whether a state agency has failed to take appropriate action or shown good cause may be delayed until the review process is exhausted, nothing in the language of the regulation authorizes OSM to withhold its initial determination.

The 10-day notification period in 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(iii)(A) establishes the response time for state regulatory authorities. The allowance of additional time beyond the 10-day period for the state agency to take appropriate action or show good cause would not only violate the regulation but the plain language of the statute as well.

Where reclamation costs exceed the amounts forfeited under a bond, the Board will not affirm an OSM decision that a state agency has taken appropriate action under 30 U.S.C. § 1271(a)(1) (1988), simply because a bond was ordered forfeited.

If outstanding violations remain on a minesite, the operator is bankrupt, and forfeited reclamation bonds are insufficient to abate the violations, a state will not ordinarily be considered to have taken appropriate action or shown good cause for failure to do so under 30 U.S.C. § 1271(a)(1) (1988), unless it is diligently pursuing or has exhausted all appropriate enforcement provisions of the state program and is taking action to ensure that the operator and its owners and principals will be precluded from receiving future permits while violations continue at the site.

Under 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(i) and (ii)(C), OSM is required to conduct an immediate inspection when the person informing OSM

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CITIZEN COMPLAINTS--Continued

Generally--Continued

provides adequate proof that imminent danger of significant environmental harm exists and that the state has failed to take appropriate action. If OSM receives adequate proof, an immediate inspection is mandatory; the statute gives OSM no discretion to defer an inspection when an imminent danger is involved.

Where a particular violation constitutes a significant, imminent environmental harm by definition, a signed statement setting forth the violation may constitute adequate proof of the existence of such a harm under 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(i) and (ii)(C). A signed statement showing that the state had improperly licensed the operation as exempt from SMCRA reclamation requirements is adequate proof that the state had failed to take appropriate action as of the date the inspection request was filed.

Robert L. Clewell et al., 123 IBLA 253 (June 18, 1992)
99 I.D. 100

CIVIL PENALTIES

Generally

The value of the land on which the minesites are located is not germane to the process of assessing civil penalties.

Where OSM has determined that two minesites are related and that their combined acreages exceed 2 acres, so that the operations are not exempt from regulation under SMCRA, and where OSM has issued two NOV's at different times citing the operator of the two minesites for identical violations at both sites, the second NOV will be vacated and treated as an amendment to the first

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CIVIL PENALTIES--Continued

Generally--Continued

for the purposes of calculating the civil penalty due for the violations.

J&M Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 90 (Jan. 14, 1992)

ENFORCEMENT PROCEDURES

Generally

When OSM and a coal miner agree that OSM will suspend enforcement of SMCRA while the miner pursues litigation in Federal court to determine whether a Federal coal mining permit is needed, enforcement may proceed when the Federal court litigation is ended.

The Board does not make initial adjudication of the existence of valid existing rights to mine that has not first been submitted to and decided by OSM, the agency with jurisdiction of the subject matter involved, nor does the Board render advisory opinions.

Gabriel Energy Corp. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 316 (Mar. 11, 1992)

Under 30 CFR 842.11(b)(2), OSM has reason to believe that a violation, condition, or practice exists if the facts alleged by an informant would, if true, constitute a condition, practice, or violation of SMCRA, Departmental regulations at 30 CFR ch. VII, the applicable state program, or any condition of a permit or exploration approval. Once a citizen's complaint gives

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ENFORCEMENT PROCEDURES--Continued

Generally--Continued

OSM reason to believe that a violation of the Act has occurred, OSM is required by 30 U.S.C. § 1271(a)(1) (1988), to notify the state regulatory authority thereof.

Under 30 CFR 842.11(b)(1)(iii)(A), OSM is required to immediately notify the state regulatory authority in writing when in response to a 10-day notice the state regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. If the state regulatory authority disagrees with the authorized representative's written determination, it may file a request in writing for informal review of that determination by the Deputy Director within 5 days from receipt of OSM's written determination. While a final determination as to whether a state agency has failed to take appropriate action or shown good cause may be delayed until the review process is exhausted, nothing in the language of the regulation authorizes OSM to withhold its initial determination.

The 10-day notification period in 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(iii)(A) establishes the response time for state regulatory authorities. The allowance of additional time beyond the 10-day period for the state agency to take appropriate action or show good cause would not only violate the regulation but the plain language of the statute as well.

Where reclamation costs exceed the amounts forfeited under a bond, the Board will not affirm an OSM decision that a state agency has taken appropriate action under 30 U.S.C. § 1271(a)(1) (1988), simply because a bond was ordered forfeited.

If outstanding violations remain on a minesite, the operator is bankrupt, and forfeited reclamation bonds are insufficient to abate the violations, a state

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ENFORCEMENT PROCEDURES--Continued

Generally--Continued

will not ordinarily be considered to have taken appropriate action or shown good cause for failure to do so under 30 U.S.C. § 1271(a)(1) (1988), unless it is diligently pursuing or has exhausted all appropriate enforcement provisions of the state program and is taking action to ensure that the operator and its owners and principals will be precluded from receiving future permits while violations continue at the site.

Under 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(i) and (ii)(C), OSM is required to conduct an immediate inspection when the person informing OSM provides adequate proof that imminent danger of significant environmental harm exists and that the state has failed to take appropriate action. If OSM receives adequate proof, an immediate inspection is mandatory; the statute gives OSM no discretion to defer an inspection when an imminent danger is involved.

Where a particular violation constitutes a significant, imminent environmental harm by definition, a signed statement setting forth the violation may constitute adequate proof of the existence of such a harm under 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(i) and (ii)(C). A signed statement showing that the state had improperly licensed the operation as exempt from SMCRA reclamation requirements is adequate proof that the state had failed to take appropriate action as of the date the inspection request was filed.

Robert L. Clewell et al., 123 IBLA 253 (June 18, 1992)
99 I.D. 100

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

--Continued

ENVIRONMENTAL HARM

Generally

If outstanding violations remain on a minesite, the operator is bankrupt, and forfeited reclamation bonds are insufficient to abate the violations, a state will not ordinarily be considered to have taken appropriate action or shown good cause for failure to do so under 30 U.S.C. § 1271(a)(1) (1988), unless it is diligently pursuing or has exhausted all appropriate enforcement provisions of the state program and is taking action to ensure that the operator and its owners and principals will be precluded from receiving future permits while violations continue at the site.

Under 30 CFR 843.11(a)(2), surface mining operations conducted without a valid permit constitute a condition or practice that causes or can reasonably be expected to cause significant, imminent environmental harm.

Under 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(i) and (ii)(C), OSM is required to conduct an immediate inspection when the person informing OSM provides adequate proof that imminent danger of significant environmental harm exists and that the state has failed to take appropriate action. If OSM receives adequate proof, an immediate inspection is mandatory; the statute gives OSM no discretion to defer an inspection when an imminent danger is involved.

Where a particular violation constitutes a significant, imminent environmental harm by definition, a signed statement setting forth the violation may constitute adequate proof of the existence of such a harm under 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(i) and (ii)(C). A signed statement showing that the state had improperly licensed the operation

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ENVIRONMENTAL HARM--Continued

Generally--Continued

as exempt from SMCRA reclamation requirements is adequate proof that the state had failed to take appropriate action as of the date the inspection request was filed.

Robert L. Clewell et al., 123 IBLA 253 (June 18, 1992)
99 I.D. 100

EXEMPTIONS

2-Acre

Until its amendment in 1987, sec. 528(2) of SMCRA, 30 U.S.C. § 1278(2) (1988), provided that SMCRA would not apply to the extraction of coal for commercial purposes where the surface mining operation affected 2 acres or less. Departmental regulations at 30 CFR 700.11(b), implementing the 2-acre exemption, provide that SMCRA applies to all surface mining and reclamation activities except the extraction of coal for commercial purposes where the surface coal mining and reclamation operation, together with any related operations, has or will have an affected area of 2 acres or less. Operations are deemed related if they (1) occur within 12 months of each other, (2) are physically related, and (3) are under common control.

An operator challenging OSM's jurisdiction on the grounds that its mining activities fall within the 2-acre exemption under SMCRA bears the burden of affirmatively demonstrating entitlement to the exemption. OSM's determination that more than 2 acres have been disturbed at related minesites will be affirmed on appeal where the operator fails to show the contrary.

Where OSM has determined that two minesites are related and that their combined acreages exceed 2 acres, so that the operations are not exempt from regulation

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

EXEMPTIONS--Continued

2-Acre--Continued

under SMCRA, and where OSM has issued two NOV's at different times citing the operator of the two minesites for identical violations at both sites, the second NOV will be vacated and treated as an amendment to the first for the purposes of calculating the civil penalty due for the violations.

J&M Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 90 (Jan. 14, 1992)

Sec. 528(2) of SMCRA, P.L. 95-87, 91 Stat. 445, 514 (1977), formerly provided that the Act would not apply to "the extraction of coal for commercial purposes when the surface mining operation affects two acres or less." Under 30 CFR 700.11(b), the exemption does not apply where the operation, together with any "related" operation, has or will have an affected area of 2 acres or more. Under 30 CFR 700.11(b)(2), operations are deemed "related" if (1) they occur within 12 months of each other; (2) they are "physically related"; and (3) they are under "common control."

The permittee of a surface mining operation is ordinarily responsible for violations of SMCRA and the regulations committed by the operator on the permitted site. The issuance of a CO to the holder of a 2-acre permit for failure to obtain a permit under the Act and reclaim the highwall as required under the Act which is predicated on the mining of physically related sites under common control totalling in excess of 2 acres within 12 months will be reversed where the record establishes that the permittee of the 2-acre site had no ownership or control of operations on the physically related sites.

Mary Herald v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 334 (July 14, 1992)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

HYDROLOGIC SYSTEM PROTECTION

Generally

Although backfilling and grading, the remedial action required to abate a violation of 30 CFR 717.14, may also be helpful in remedying a violation of 30 CFR 717.17 (concerning protection of the hydrologic system from mine runoff) by helping to control water flow from a minesite, an NOV citing violations of both 30 CFR 717.14 and 717.17 is not duplicative where the record establishes that there were violations of both regulations.

J&M Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 90 (Jan. 14, 1992)

Under 43 CFR 4.1366(a), when a permit applicant seeks review of a permit condition imposed by OSM, OSM has the burden of going forward to establish a prima facie case as to the failure of the permit applicant to comply with applicable requirements of the Act or regulations or the appropriateness of the permit condition, and the applicant shall have the ultimate burden of persuasion as to its entitlement to the permit or the inappropriateness of the permit condition. To establish a prima facie case, OSM must introduce evidence that will justify but not compel a finding that the condition is an appropriate response to a failure of the permit application to satisfy a specified statutory or regulatory standard or is otherwise appropriate.

When the evidence demonstrates that OSM's principal reason for imposing a permit condition requiring the permittee to dewater impoundments was its concern for protecting the water rights claims of downstream users, even though such claims are currently being adjudicated in state court, OSM has failed to establish a prima facie case that the permit condition is appropriate, and the ALJ properly declares the condition invalid.

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

HYDROLOGIC SYSTEM PROTECTION--Continued

Generally--Continued

When OSM fails to establish a prima facie case that it acted pursuant to provisions of SMCRA and implementing regulations in imposing a condition requiring the permittee to dewater impoundments, it is proper for the ALJ to rule that the permit condition is inappropriate.

Peabody Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 195 (June 5, 1992)

IMPOUNDMENTS

Generally

Under 43 CFR 4.1366(a), when a permit applicant seeks review of a permit condition imposed by OSM, OSM has the burden of going forward to establish a prima facie case as to the failure of the permit applicant to comply with applicable requirements of the Act or regulations or the appropriateness of the permit condition, and the applicant shall have the ultimate burden of persuasion as to its entitlement to the permit or the inappropriateness of the permit condition. To establish a prima facie case, OSM must introduce evidence that will justify but not compel a finding that the condition is an appropriate response to a failure of the permit application to satisfy a specified statutory or regulatory standard or is otherwise appropriate.

When the evidence demonstrates that OSM's principal reason for imposing a permit condition requiring the permittee to dewater impoundments was its concern for protecting the water rights claims of downstream users, even though such claims are currently being adjudicated in state court, OSM has failed to establish a prima

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

IMPOUNDMENTS--Continued

Generally--Continued

facie case that the permit condition is appropriate, and the ALJ properly declares the condition invalid.

When OSM fails to establish a prima facie case that it acted pursuant to provisions of SMCRA and implementing regulations in imposing a condition requiring the permittee to dewater impoundments, it is proper for the ALJ to rule that the permit condition is inappropriate.

Peabody Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 195 (June 5, 1992)

INSPECTIONS

Generally

Where reclamation costs exceed the amounts forfeited under a bond, the Board will not affirm an OSM decision that a state agency has taken appropriate action under 30 U.S.C. § 1271(a)(1) (1988), simply because a bond was ordered forfeited.

Robert L. Clewell et al., 123 IBLA 253 (June 18, 1992)
99 I.D. 100

10-day Notice to State

Regulation 30 CFR 843.17 provides that no notice of violation may be vacated for the agency's failure to give the notice to the state regulatory authority required by 30 CFR 842.11(b)(1)(ii)(B).

Harlan Cumberland Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 129 (May 21, 1992)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

--Continued

INSPECTIONS--Continued

10-day Notice to State--Continued

Under 30 CFR 842.11(b)(2), OSM has reason to believe that a violation, condition, or practice exists if the facts alleged by an informant would, if true, constitute a condition, practice, or violation of SMCRA, Departmental regulations at 30 CFR ch. VII, the applicable state program, or any condition of a permit or exploration approval. Once a citizen's complaint gives OSM reason to believe that a violation of the Act has occurred, OSM is required by 30 U.S.C. § 1271(a)(1) (1988), to notify the state regulatory authority thereof.

Under 30 CFR 842.11(b)(1)(iii)(A), OSM is required to immediately notify the state regulatory authority in writing when in response to a 10-day notice the state regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. If the state regulatory authority disagrees with the authorized representative's written determination, it may file a request in writing for informal review of that determination by the Deputy Director within 5 days from receipt of OSM's written determination. While a final determination as to whether a state agency has failed to take appropriate action or shown good cause may be delayed until the review process is exhausted, nothing in the language of the regulation authorizes OSM to withhold its initial determination.

The 10-day notification period in 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(iii)(A) establishes the response time for state regulatory authorities. The allowance of additional time beyond the 10-day period for the state agency to take appropriate action or show good cause would not only violate the regulation but the plain language of the statute as well.

If outstanding violations remain on a minesite, the operator is bankrupt, and forfeited reclamation bonds are insufficient to abate the violations, a state

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

INSPECTIONS--Continued

10-day Notice to State--Continued

will not ordinarily be considered to have taken appropriate action or shown good cause for failure to do so under 30 U.S.C. § 1271(a)(1) (1988), unless it is diligently pursuing or has exhausted all appropriate enforcement provisions of the state program and is taking action to ensure that the operator and its owners and principals will be precluded from receiving future permits while violations continue at the site.

Under 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(i) and (ii)(C), OSM is required to conduct an immediate inspection when the person informing OSM provides adequate proof that imminent danger of significant environmental harm exists and that the state has failed to take appropriate action. If OSM receives adequate proof, an immediate inspection is mandatory; the statute gives OSM no discretion to defer an inspection when an imminent danger is involved.

Where a particular violation constitutes a significant, imminent environmental harm by definition, a signed statement setting forth the violation may constitute adequate proof of the existence of such a harm under 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(i) and (ii)(C). A signed statement showing that the state had improperly licensed the operation as exempt from SMCRA reclamation requirements is adequate proof that the state had failed to take appropriate action as of the date the inspection request was filed.

Robert L. Clewell et al., 123 IBLA 253 (June 18, 1992)
99 I.D. 100

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

NOTICES OF VIOLATION

Generally

Where OSM has determined that two minesites are related and that their combined acreages exceed 2 acres, so that the operations are not exempt from regulation under SMCRA, and where OSM has issued two NOV's at different times citing the operator of the two minesites for identical violations at both sites, the second NOV will be vacated and treated as an amendment to the first for the purposes of calculating the civil penalty due for the violations.

J&M Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 122 IBLA 90 (Jan. 14, 1992)

Permittees

The permittee of a surface mining operation is ordinarily responsible for violations of SMCRA and the regulations committed by the operator on the permitted site. The issuance of a CO to the holder of a 2-acre permit for failure to obtain a permit under the Act and reclaim the highwall as required under the Act which is predicated on the mining of physically related sites under common control totalling in excess of 2 acres within 12 months will be reversed where the record establishes that the permittee of the 2-acre site had no ownership or control of operations on the physically related sites.

Mary Herald v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 334 (July 14, 1992)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

NOTICES OF VIOLATION--Continued

Remedial Actions

Regulation 30 CFR 817.121(c)(1), requiring an operator to correct any material damage resulting from subsidence caused to surface lands, and regulation 405 KAR 18:210 § 3(2)(a), modelled thereon, are supported by sec. 516(b)(1) of SMCRA, 30 U.S.C. § 1266(b)(1) (1988), which requires that each permit require the operator to adopt measures consistent with known technology in order to, inter alia, prevent subsidence causing material damage to the extent technologically and economically feasible and to maintain the value and reasonably foreseeable use of surface lands.

Harlan Cumberland Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 129 (May 21, 1992)

PERFORMANCE BOND OR DEPOSIT

Generally

A performance bond, issued in 1981 during the interim program, when a bond was required by the State but was not required by SMCRA, and utilized again as the bond required by the State's surface mining act and by SMCRA for the grant of a permanent program permit, is a statutory bond pursuant to SMCRA. Such a bond remains enforceable by OSM despite repeal of the State's surface mining act.

Exchange Mutual Insurance Co. (On Reconsideration),
Exchange Mutual Insurance Co., 124 IBLA 72 (Sept. 2, 1992)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

PERFORMANCE BOND OR DEPOSIT--Continued

Generally--Continued

Departmental regulation 30 CFR 800.21 does not allow hypothecation of real property not owned by a permittee to insure mine reclamation.

Pacific Coast Coal Co., Inc., 124 IBLA 370 (Dec. 9, 1992)

Forfeiture

Where reclamation costs exceed the amounts forfeited under a bond, the Board will not affirm an OSM decision that a state agency has taken appropriate action under 30 U.S.C. § 1271(a)(1) (1988), simply because a bond was ordered forfeited.

Robert L. Clewell et al., 123 IBLA 253 (June 18, 1992)
99 I.D. 100

PERMITS

Generally

Under 43 CFR 4.1366(a), when a permit applicant seeks review of a permit condition imposed by OSM, OSM has the burden of going forward to establish a prima facie case as to the failure of the permit applicant to comply with applicable requirements of the Act or regulations or the appropriateness of the permit condition, and the applicant shall have the ultimate burden of persuasion as to its entitlement to the permit or the inappropriateness of the permit condition. To establish a prima facie case, OSM must introduce evidence that will justify but not compel a finding that the condition is an appropriate response to a failure of the permit

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

PERMITS--Continued

Generally--Continued

application to satisfy a specified statutory or regulatory standard or is otherwise appropriate.

When the evidence demonstrates that OSM's principal reason for imposing a permit condition requiring the permittee to dewater impoundments was its concern for protecting the water rights claims of downstream users, even though such claims are currently being adjudicated in state court, OSM has failed to establish a prima facie case that the permit condition is appropriate, and the ALJ properly declares the condition invalid.

When OSM fails to establish a prima facie case that it acted pursuant to provisions of SMCRA and implementing regulations in imposing a condition requiring the permittee to dewater impoundments, it is proper for the ALJ to rule that the permit condition is inappropriate.

Peabody Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 195 (June 5, 1992)

Approval

Under 43 CFR 4.1366(a), when a permit applicant seeks review of a permit condition imposed by OSM, OSM has the burden of going forward to establish a prima facie case as to the failure of the permit applicant to comply with applicable requirements of the Act or regulations or the appropriateness of the permit condition, and the applicant shall have the ultimate burden of persuasion as to its entitlement to the permit or the inappropriateness of the permit condition. To establish a prima facie case, OSM must introduce evidence that will justify but not compel a finding that the condition is

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

PERMITS--Continued

Approval--Continued

an appropriate response to a failure of the permit application to satisfy a specified statutory or regulatory standard or is otherwise appropriate.

When the evidence demonstrates that OSM's principal reason for imposing a permit condition requiring the permittee to dewater impoundments was its concern for protecting the water rights claims of downstream users, even though such claims are currently being adjudicated in state court, OSM has failed to establish a prima facie case that the permit condition is appropriate, and the ALJ properly declares the condition invalid.

When OSM fails to establish a prima facie case that it acted pursuant to provisions of SMCRA and implementing regulations in imposing a condition requiring the permittee to dewater impoundments, it is proper for the ALJ to rule that the permit condition is inappropriate.

Peabody Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 195 (June 5, 1992)

PUBLIC HEALTH AND SAFETY

Imminent Danger

Under 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(i) and (ii)(C), OSM is required to conduct an immediate inspection when the person informing OSM provides adequate proof that imminent danger of significant environmental harm exists and that the state has failed to take appropriate action. If OSM receives adequate proof, an immediate inspection is mandatory; the statute gives OSM no discretion to defer an inspection when an imminent danger is involved.

Where a particular violation constitutes a significant, imminent environmental harm by definition, a

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

PUBLIC HEALTH AND SAFETY--Continued

Imminent_Danger--Continued

signed statement setting forth the violation may constitute adequate proof of the existence of such a harm under 30 U.S.C. § 1271(a)(1) (1988), and 30 CFR 842.11(b)(1)(i) and (ii)(C). A signed statement showing that the state had improperly licensed the operation as exempt from SMCRA reclamation requirements is adequate proof that the state had failed to take appropriate action as of the date the inspection request was filed.

Robert L. Clewell et al., 123 IBLA 253 (June 18, 1992)
99 I.D. 100

STATE PROGRAM

10-day_Notice to_State

Regulation 30 CFR 843.17 provides that no notice of violation may be vacated for the agency's failure to give the notice to the state regulatory authority required by 30 CFR 842.11(b)(1)(ii)(B).

Harlan Cumberland Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 129 (May 21, 1992)

VARIANCES

Generally

An operation is exempt from SMCRA if extraction of coal is incidental to extraction of other materials and constitutes less than 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use and

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

VARIANCES--Continued

Generally--Continued

sale. If an operation is not exempt, mining without a valid permit would constitute a violation.

Robert L. Clewell et al., 123 IBLA 253 (June 18, 1992)
99 I.D. 100

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

Generally

Under 43 CFR 4.1366(a), when a permit applicant seeks review of a permit condition imposed by OSM, OSM has the burden of going forward to establish a prima facie case as to the failure of the permit applicant to comply with applicable requirements of the Act or regulations or the appropriateness of the permit condition, and the applicant shall have the ultimate burden of persuasion as to its entitlement to the permit or the inappropriateness of the permit condition. To establish a prima facie case, OSM must introduce evidence that will justify but not compel a finding that the condition is an appropriate response to a failure of the permit application to satisfy a specified statutory or regulatory standard or is otherwise appropriate.

When the evidence demonstrates that OSM's principal reason for imposing a permit condition requiring the permittee to dewater impoundments was its concern for protecting the water rights claims of downstream users, even though such claims are currently being adjudicated in state court, OSM has failed to establish a prima facie case that the permit condition is appropriate, and the ALJ properly declares the condition invalid.

When OSM fails to establish a prima facie case that it acted pursuant to provisions of SMCRA and implementing regulations in imposing a condition requiring the

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Generally--Continued

permittee to dewater impoundments, it is proper for the ALJ to rule that the permit condition is inappropriate.

Peabody Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 123 IBLA 195 (June 5, 1992)

SURVEYS OF PUBLIC LANDS

(See also Boundaries, Public Lands)

GENERALLY

When BLM changes the location of a Native allotment claim from its originally intended location during the course of the survey of the claim boundaries to compensate for the loss of a portion of the original claim by erosion, and confirms the legislative approval of the claim in its new location, the Board will set aside the BLM decision and remand the case for resurvey and reconfirmation of the legislative approval of the claim in its original location.

Hermann T. Kroener, 124 IBLA 57 (Aug. 27, 1992)

TIMBER SALES AND DISPOSALS

It is proper for BLM to deny a protest to a proposed timber sale when it has fully considered all of the probably site-specific and cumulative environmental impacts of the sale (including the impact on the Northern spotted owl, a Federally listed threatened

TIMBER SALES AND DISPOSALS--Continued

species) and concluded that there will be no significant environmental impact not previously considered in an applicable EIS, and the appellant has failed to demonstrate otherwise.

It is proper for BLM to deny a protest to a proposed timber sale based on a contention that the sale was devised in accordance with an overall BLM strategy for the interim protection of the Northern spotted owl (a Federally listed threatened species) generally called the Jamison Strategy, if BLM has fully complied with sec. 7(a)(2) of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536(a)(2) (1988), and there is no evidence that if an alternative strategy had been adopted the effect of the sale upon the owl would be any different.

In re Cedar Pot Thinning Sale et al., 122 IBLA 53 (Jan. 9, 1992)

It is proper for BLM to deny a protest to a proposed timber sale contending that BLM failed to consider the impact of permitted overstory removal, salvage operations, and road building on the Pacific yew and that the proposed timber sale does not conform with applicable State office policy regarding management of the yew when BLM specifically reserved the yew from cutting in the sale contract, and the protestant submits no evidence that the sale may adversely affect the yew or that BLM is not abiding by its stated policy.

In re Grizzly Knob Timber Sale, 122 IBLA 155 (Feb. 4, 1992)

When all other challenges to a proposed timber sale have been resolved by Federal court action and the record, as supplemented on appeal, establishes that BLM fulfilled all of its responsibilities to conserve the Northern spotted owl (designated as threatened during the pendency of the appeal) imposed by the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531-1543

TIMBER SALES AND DISPOSALS--Continued

(1988), the Board will affirm BLM's decision to proceed with the sale.

Headwaters, Inc., 122 IBLA 362 (Mar. 20, 1992)

TRESPASS

GENERALLY

Any use or occupancy of the public lands such as for radio broadcasting which requires a right-of-way or temporary use permit, which use has not been authorized, is prohibited and shall constitute a trespass for which the trespasser is liable for administrative costs, damages, and penalties under the regulations at 43 CFR 2801.3.

An assessment of damages for a willful trespass is properly affirmed where appellant's conduct constituted a voluntary or conscious trespass in that the evidence shows appellant knew of the lack of authority to use the public lands for communication site purposes.

High Desert Communications, Inc., 123 IBLA 20 (Apr. 24, 1992)

A for-profit corporation which does not qualify for the free use of mineral materials under the provisions of the Materials Act of July 31, 1947, as amended, 30 U.S.C. § 601 (1988), and its implementing regulations, 43 CFR Part 3600, is properly cited for trespass for the unauthorized removal of mineral materials when it removes aggregate from a BLM pit without prior payment in violation of the terms of its material sales contract and 43 CFR 3610.1-3, even though it asserts that it was told by BLM personnel that it would not have to pay royalty for the material since the material was to be used on a BLM road-surfacing project. Reliance on such representations, although insufficient to grant appellant rights not authorized by law, may, however,

TRESPASS--Continued

GENERALLY--Continued

demonstrate that the trespass was innocent, not willful, and an assessment of triple damages for such trespass will be set aside and the case remanded for reevaluation of the appropriate measure of damages.

So. Way Co., dba Southway Construction Co., Inc.,
123 IBLA 122 (May 21, 1992)

A mining claimant who constructs a road and clears land in a WSA in connection with a post-FLPMA mining claim violates 43 CFR 3802.1-1 by failing to file a plan of operations and receive approval prior to beginning work. Such unauthorized actions constitute a trespass under 43 CFR 2801.3.

A mining claimant who constructs a road across public lands in connection with a mining claim without filing a notice of such action with BLM violates 43 CFR 3809.1-3(a). Such construction is unauthorized and constitutes a trespass under 43 CFR 2801.3.

A mining claimant who violates 43 CFR 3802.1 by constructing a road in a WSA in conjunction with a mining claim without filing and receiving approval of a plan of operations or who violates 43 CFR 3809.1-3(a) by constructing an access road across public lands to a mining claim without filing a notice of such action with BLM is liable for the costs of rehabilitating and stabilizing such lands and for costs incurred by the United States in the investigation and termination of such trespass.

Karry K. Klump, 123 IBLA 377 (July 23, 1992)

TRESPASS--Continued

MEASURE OF DAMAGES

Any use or occupancy of the public lands such as for radio broadcasting which requires a right-of-way or temporary use permit, which use has not been authorized, is prohibited and shall constitute a trespass for which the trespasser is liable for administrative costs, damages, and penalties under the regulations at 43 CFR 2801.3.

An assessment of damages for a willful trespass is properly affirmed where appellant's conduct constituted a voluntary or conscious trespass in that the evidence shows appellant knew of the lack of authority to use the public lands for communication site purposes.

High Desert Communications, Inc., 123 IBLA 20 (Apr. 24, 1992)

When the vegetative material severed from the land in trespass is so far from the area permitted under a vegetative material sale contract that the act is reasonably deemed to be a conscious performance of a prohibited act or indifference to or reckless disregard of the law, BLM may assess damages for a willful trespass, pursuant to 43 CFR 9239.1-3(a).

Under 43 CFR 9239.1-3, when applicable State laws do not impose a higher penalty, the trespasser may be assessed three times the value of the timber or other vegetative materials severed or removed. By this imposition of treble damages the trespasser is required to: (1) reimburse the United States for the value of the lost timber or vegetative resource, and (2) pay the penalty assessed under 43 CFR 9239.1-3 in an additional amount equal to two times that value. The value to be used for this determination is the value of the timber or vegetative material at the time of the trespass, i.e., when severed or removed from the public lands.

J. W. Weaver, 124 IBLA 29 (Aug. 21, 1992)

TRESPASS--Continued

MEASURE OF DAMAGES--Continued

When the record supports a finding that the purchaser under a mineral materials sale contract committed a willful trespass by removing sand and gravel in excess of the volume limitation in the contract, a BLM levy of trespass damages determined in accordance with applicable state law will be affirmed.

Frehner Construction Co., Inc., 124 IBLA 310 (Nov. 4, 1992)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (AMENDED 1987) (See also Appeals)

ADMINISTRATIVE REVIEW AND APPEALS

The price for which tenant-owned real property improvements may be acquired is not reviewable under appeals procedures applicable to relocation assistance benefits claims.

Uniform Relocation Assistance Appeal of Humboldt Fish & Game Club, & Each Member Thereof, 9 OHA 161 (May 15, 1992)

UNIFORM RELOCATION ASSISTANCE

Generally

Where claimants commenced occupancy of an office-residence structure on acquired lands after the property had been acquired by the United States and subsequently moved therefrom upon termination of their occupancy by the Park Service, claimants did not move as a result of the acquisition of the property by the United States and, consequently, they do not qualify as displaced persons and are not eligible for benefits

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES ACT OF 1970 (AMENDED 1987)--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Generally--Continued

under the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. & Mrs. John Watt, 9 OHA 181 (Aug. 28, 1992)

Moving and Related Expenses

Generally

Where appellant has not shown error in the determination of the Fish and Wildlife Service upon appellant's claim for moving and related expenses and the administrative record supports the determination made, the Fish and Wildlife Service determination will be affirmed.

Uniform Relocation Assistance Appeal of Humboldt Fish & Game Club, & Each Member Thereof, 9 OHA 161 (May 15, 1992)

Payments in Lieu of Moving and Related Expenses

Fixed Payment(s)

Taking of Business Operation

Where appellants fail to establish entitlement to a fixed payment for displacement from a business in an amount greater than that allowed in the decision appealed from, and the record evidence supports the

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES ACT OF 1970 (AMENDED 1987)--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses
--Continued

Fixed Payment(s)--Continued

Taking of Business Operation--Continued

determination made, the decision appealed from will be affirmed.

Uniform Relocation Assistance Appeal of Joel A. &
Susan B. Lord, 9 OHA 170 (June 9, 1992)

WILD AND SCENIC RIVERS ACT

Under 43 CFR 3809.1-4(b)(2), an approved plan of operations is required prior to commencing any operation except casual use in areas designated as a potential addition or an actual component of the national wild and scenic rivers system.

The general requirement of 16 U.S.C. § 1274(b) (1988), that the boundaries of each component of the national wild and scenic rivers systems designated by 16 U.S.C. § 1274(a) (1988), shall include an average of not more than 320 acres per mile on both sides of the river does not apply to river areas that Congress has specifically defined by reference to a map.

Because Departmental regulation 43 CFR 3809.1-4(b)(2) requires approval of a plan of operations prior to commencing any operation except casual use in areas designated as a potential addition to the national wild and scenic rivers system as well as actual components thereof, any operation within the boundaries on a map identified as a river area under 16 U.S.C. § 1274(b) (1988), have been completed, even though the map

WILD AND SCENIC RIVERS ACT--Continued

includes land in addition to the area indicated when the river was listed as a potential addition under 16 U.S.C. § 1276 (1988).

Joe Trow, 123 IBLA 96 (May 12, 1992)

Where BLM's decision not to transfer commercial use privileges to noncommercial use on the wild section of the Rogue River is supported by the record, sound management policies, and applicable precedent, it will not be disturbed on appeal.

Nat'l Organization for River Sports, 124 IBLA 38 (Aug. 26, 1992)

WILD FREE-ROAMING HORSES AND BURROS ACT

The Board will affirm a decision establishing the appropriate management level suitable for a herd management area where the decision is predicated on an analysis of monitoring data such as grazing utilization, trend in range condition, actual use, and other factors, which demonstrate that maintenance of the herd at the prescribed levels of horse population will restore the range to a thriving natural ecological balance and prevent a deterioration of the range, in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1988). When an appellant merely urges some other course of action which may be theoretically as correct as that chosen by BLM, this Board will not substitute its judgment for that of the Department's experts, but will rely on their reasoned analysis. In cases involving the interpretation of data, the appellant must demonstrate by the preponderance of the evidence that the BLM expert erred

WILD FREE-ROAMING HORSES AND BURROS ACT--Continued

when collecting the underlying data, when interpreting the data, or in reaching the conclusion.

Animal Protection Institute of America et al., 122 IBLA 290 (Mar. 5, 1992)

The decision to remove wild horses from an area of the public lands is properly reversed where the record fails to establish that the horses are excess; that is to say, that removal of the horses is necessary to establish a thriving natural ecological balance.

Animal Protection Institute of America, 124 IBLA 231 (Oct. 28, 1992)

WILDERNESS ACT

A protest against sale of oil and gas leases that contends the sale should not proceed because the land to be leased has wilderness characteristics is properly dismissed because the final administrative determination that the land was not wilderness in character was made in 1985 when BLM and the Board decided not to include the land at issue in a WSA.

Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, 122 IBLA 17 (Jan. 2, 1992)

Failure to appeal a decision designating an area as a WSA renders it final and precludes a party from later challenging it on appeal of a subsequent BLM decision approving a road restoration project within the WSA.

A BLM decision approving a road restoration project in a WSA will be sustained on appeal notwithstanding the fact that it may not be possible to restore all roads

WILDERNESS ACT--Continued

within the WSA to a substantially unnoticeable condition, as to hold otherwise would defeat legislative intent demonstrated in FLPMA and the Wilderness Act.

San Juan County Commission, 123 IBLA 68 (May 11, 1992)

It is within BLM's authority to require an owner of a tract of private land within a designated wilderness area to obtain a lease of lands used for vehicular access to the inholding pursuant to sec. 302(b) of FLPMA, 43 U.S.C. § 732(b) (1988).

If the appraisal setting fair market rental value fails to consider the effect of restrictive clauses limiting the use and enjoyment of the leased land on the fair market rental value, the appraisal will be set aside and the case file will be remanded to consider rental reductions reflecting those restrictions.

Mathilda B. Williams, Jack F. Brown, 124 IBLA 7 (Aug. 13, 1992)

WITHDRAWALS AND RESERVATIONS

EFFECT OF

The fact that land is withdrawn and may be unavailable for conveyance to a Native group is unrelated to the factual determination of the group's locality.

Minchumina Homeowners Ass'n et al., State of Alaska (Intervenor) v. Minchumina Natives, Inc. & The Bureau of Indian Affairs, 122 IBLA 375 (Apr. 2, 1992)

WITHDRAWALS AND RESERVATIONS--Continued

POWERSITES

Locators of claims on land opened under 30 U.S.C. § 621(a) (1988), have been required by 30 U.S.C. § 623 (1988), to file copies of their location notices with BLM within 1 year after Aug. 11, 1955, for all locations previously made, or within 60 days of location for locations thereafter made.

The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1988), authorizes the location and patent of mining claims on public lands withdrawn for power purposes. However, the Department may hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land and may issue an order providing for one of the following three alternatives: (1) a complete prohibition on placer mining; (2) permission to engage in placer mining upon the condition that the locator shall restore the surface of the claim; or (3) a general permission to engage in placer mining.

Where a copy of the notice of location of a mining claim on land withdrawn for powersite purposes was not recorded with BLM within the time prescribed by 30 U.S.C. § 623 (1988), a notice of intent from BLM to conduct a hearing under sec. 621(b) will not be considered untimely if the notice of intent was issued within 60 days after receipt of some affirmative acknowledgement by the owner of the claim that the claim was subject to that provision of the Act.

To determine whether mining would "substantially interfere" with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1988), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of mining outweigh the benefits from other uses.

In making a determination whether placer mining operations would substantially interfere with other uses of powersite lands, the party who seeks to restrict or

WITHDRAWALS AND RESERVATIONS--Continued

POWERSITES--Continued

prohibit placer mining bears the initial burden of presenting a prima facie case. The burden then shifts to the mining claimant to overcome the case so proved by a preponderance of the evidence.

United States v. Phyrne Brown, 124 IBLA 247 (Nov. 2, 1992)

WORDS AND PHRASES

"Marketable condition rule." A Federal oil and gas lessee is under an obligation to assume the expenses of placing any gas produced and sold into "marketable condition." No deduction from royalty is allowed for the expenses of compressing gas required to place it in marketable condition regardless of whether these costs are paid directly by the lessee or by a third party. The price of gas sold at the wellhead which has been reduced from the price of gas in marketable condition by the costs of compressing it as required for marketing to a pipeline purchaser does not establish the value of the gas in marketable condition.

Beartooth Oil & Gas Co., 122 IBLA 267 (Mar. 3, 1992)

"Unavoidably lost." Notice to Lessees and Operators 4A, Part II.C.(2), provides that gas escaping in blowouts must be considered "unavoidably lost," subject to specified exceptions, among which is the failure of the operator to take all reasonable measures to prevent or control the loss. When, before a blowout occurred, the operator failed to pressure-test well casing contrary to a provision of the Federal permit under which the well was entered, an assessment for unavoidably lost gas under provisions of NTL-4A was proper

WORDS AND PHRASES--Continued

because the operator had not taken all reasonable measures to prevent gas loss that occurred after the blowout was controlled.

Chuska Energy Co., 123 IBLA 321 (July 9, 1992)

